FILED

No. 04-1598 MAY 27 2005

OFFICE OF THE CLERK

In The Supreme Court of the United States

ABUNDANT LIFE CHURCH, INC.,

Petitioner,

v.

JOHN TUBIOLO and wife, VICKIE TUBIOLO,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF NORTH CAROLINA

PETITION FOR WRIT OF CERTIORARI

Paul I. Klein
Counsel of Record
Katherine Freeman
KLEIN & FREEMAN, PLLC
4521 Sharon Road, Suite 150
Post Office Box 221648
Charlotte, North Carolina 28222
(704) 442-0660

Counsel for Petitioner

THE LEX GROUP DC ♦ 1750 K Street, NW ♦ Suite 475 ♦ Washington, DC 20006
(202) 955-0001 ♦ (800) 815-3791 ♦ Fax (202) 955-0022 ♦ www.thelexgroupdc.com

QUESTIONS PRESENTED

1. Civil courts may hear disputes over church property, but they have no jurisdiction over matters of ecclesiastical cognizance and polity. *The Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich*, 426 U.S. 696, 96 S. Ct. 2372 (1976). What are the criteria for defining an issue as one of "ecclesiastical cognizance and polity?"

2. Where no church property is in dispute, may a civil court inquire into the propriety of a church's termination of an individual's membership?

STATEMENT REGARDING PARTIES

All parties to the proceeding are listed in the caption of the case. Petitioner Abundant Life Church, Inc. is a non-profit corporation organized and existing under the laws of the State of North Carolina. It has no parent corporation or subsidiaries.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

STATEMENT REGARDING PARTIES ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

JURISDICTION 1

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS 2

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE PETITION 4

I. The lower federal and state courts are in irreconcilable conflict over the interpretation of the ecclesiastical abstention rule and many are in direct conflict with the relevant decisions of this Court 12

A. North Carolina decisions 12

B. The District of Columbia courts are in conflict with this Court and show confusion over the application of the ecclesiastical abstention rule 14

C. At least one federal court has acknowledged confusion over "whether the Supreme Court, if confronted with an internal dispute within a congregational church, would follow the Serbian analysis in all respects." 16

D. State court decisions vary widely 18

SUMMARY 20

CONCLUSION 21

APPENDIX

TABLE OF AUTHORITIES

Page(s)

Cases:

Bouldin v. Alexander,
82 U.S. 131 (1872).....5, 7, 8, 18

Burgess v. Rock Creek Baptist Church, et al.,
734 F. Supp. 30 (1990).....14, 15

First Baptist Church of Glen Este v. State of Ohio,
591 F. Supp. 576 (S.D. Ohio 1983).....16, 18, 19

Gonzalez v. Roman Catholic Archbishop of Manila,
280 U.S. 1, 50 S. Ct. 5 (1929).....9, 18

Grunwald v. Bornfreund,
696 F. Supp. 838 (E.D.N.Y. 1988).....17, 18

Howard v. Covenant Apostolic Church, Inc., et al.,
705 N.E.2d 385 (1997).....18, 19

Howard v. Covenant Apostolic Church, Inc., et al.,
81 Ohio St.3d 1416, 688 N.E.2d 1043 (1998).....18

Jones v. Wolf,
443 U.S. 595, 99 S. Ct. 3020 (1979).....14

Kedroff, et al. v. St. Nicholas Cathedral of
Russian Orthodox Church in North America,
344 U.S. 94, 73 S. Ct. 143 (1952).....11

Kliebenstein v.
Iowa Conference for the United Methodist Church, et al.,
663 N.W.2d 404 (2003).....19

Lemon v. Kurtzman,
403 U.S. 602 (1971) 10, 11, 16

Meshel v. Ohev Sholom Talmud Torah, et al.,
869 A.2d 343 (2005) 14, 15, 16

Presbyterian Church v. Hull Church,
393 U.S. 440, 89 S. Ct. 601 (1969) 16

The Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich,
426 U.S. 696, 96 S. Ct. 2372 (1976) ..... *passim*

The Western Conference of Original Free Will Baptists of North Carolina v. Miles,
129 S.E.2d 600, 259 N.C. 1 (1963) 12, 13

Watson v. Jones,
80 U.S. 679 (1871) ..... *passim*

Constitutional Provisions:

U.S. CONST. amend. I ..... *passim*

U.S. CONST. amend. XIV 2, 5

U.S. CONST. amend. XIV, § 1 2

Statutes:

28 U.S.C.A. § 1257(a) 1

42 U.S.C.A. § 1983 ..... 16, 17

N.C. Gen. Stat. § 7A-27(d) 3, 4

Other Authority:

Suspension or Expulsion from Church or Religious Society and the Remedies Therefor, 20 A.L.R. 2d 421 (2005) 8

PETITION FOR WRIT OF CERTIORARI

Petitioner Abundant Life Church, Inc. respectfully requests this Court to grant its petition for a writ of certiorari to review the order of the Superior Court for Orange County, North Carolina in this matter and the decision of the North Carolina Court of Appeals which affirmed it in part.

OPINIONS BELOW

The North Carolina Court of Appeals' opinion in this case, which addresses the question presented here, is reported at 605 S.E.2d 161 (N.C. App. 2004), *see* App. 3a. The North Carolina Supreme Court Order dismissing Petitioner's notice of appeal and denying its petition for discretionary review is reported at __S.E.2d___, 359 N.C. 326 (2005), *see* App. 11a. The superior court's order has not been reported. The superior court denied petitioner's motion to dismiss and deferred its motion for summary judgment on its Constitutional defense. The transcript of the hearing on those motions is reprinted in the Appendix, *infra*, at App. 76a, and the formal order is reprinted in the Appendix, *infra*, at App. 1a.

JURISDICTION

The Court of Appeals rendered its opinion on December 7, 2004. A timely notice of appeal and petition for discretionary review were simultaneously filed with the Supreme Court of North Carolina on January 11, 2005. The Supreme Court of North Carolina dismissed petitioner's notice of appeal and denied its petition for discretionary review on March 3, 2005. This petition is filed within ninety days of that date. This Court's jurisdiction is invoked under 28 U.S.C.A. § 1257(a).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves an interpretation of the First Amendment to the United States Constitution as applied to the States by the Fourteenth Amendment. The trial court in this matter incorrectly determined that it has jurisdiction over the issue of whether a church[1] has properly expelled certain of its members, in violation of the prohibition against establishment of religion through unnecessary entanglement in ecclesiastical matters. The relevant constitutional provisions involved in this case are as follows:

> Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S.C.A. Constitution, Amendment 1.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S.C.A. Constitution, Amendment 14, Section 1.

---

[1] In the context of the cases discussed herein, and in the interpretations of the Establishment Clause of the First Amendment, 'church' has been used generically to refer to a religious institution regardless of denomination.

The statute relevant to allowing this interlocutory appeal is North Carolina General Statutes § 7A-27(d), and is reprinted in the Appendix, *infra*, at App. 95a.

STATEMENT OF THE CASE

Petitioner Abundant Life Church, Inc. is and has been a congregational church in Hillsborough, North Carolina, since 1982. The Respondents John and Vickie Tubiolo were among the founding members of the church. By letter dated September 5, 2002, printed on church stationery and signed by the members of the church council, the Tubiolos' church membership was terminated. The letter described the basis for the termination in biblical terms such as: "...God deplores strife and those who cause dissension (1 Corinthians 14:33; Proverbs 6:19)." *See* App. 37a. It detailed the disruption and division the church felt the Tubiolos were causing within the congregation. Seven other scriptural principles were given as the authority for the decision. Excerpts from the church's by-laws attached to the letter indicate that "Scriptural discipline" may be used to terminate membership. *See* App. 37a. The church's articles of incorporation, which Mr. Tubiolo himself signed as an officer of the church at the time of its incorporation, grant the corporation "the power and authority to make the final decision involving any and all transactions" and they make reference to the by-laws. *See* App. 25a. The church has never disavowed the termination of the Tubiolos' membership and in fact, stands by it as its own act.

On October 8, 2002 the Tubiolos filed suit naming the church corporation as the only defendant. The suit sought, among other things, reinstatement of Tubiolos' church membership. The federal question raised here was first raised in the church's motion to dismiss and/or motion for summary judgment on First Amendment grounds. The motion to dismiss was denied and the motion for summary

judgment was held open until the completion of discovery. *See* App. 1a.

As the court's interlocutory order affected substantial Constitutional rights of the church, petitioner was entitled to an immediate appeal pursuant to North Carolina General Statutes § 7A-27(d). *See* App. 95a. On appeal, the North Carolina Court of Appeals affirmed in part, reversed in part and remanded on the question of whether the church had the authority to terminate the Tubiolos' membership, stating:

> We hold that the plaintiffs' membership in the defendant is in the nature of a property interest, and that the courts do have jurisdiction over the very narrow issue of whether the bylaws were properly adopted by the defendant...we may inquire whether the resolution of expulsion was the act of the church, or of persons who were not the church and who consequently had no right to excommunicate others.[2] *See* App. 8a.

REASONS FOR GRANTING THE PETITION

This Court has never ruled on whether courts may hear church membership termination disputes where the membership itself is the only 'property right' at issue. Consequently, there is no consistency on this issue in the lower courts. They have created a panoply of rationales for their various contradictory decisions interpreting the

---

[2] It is significant that, while the court of appeals directs the trial court to determine whether the church properly adopted its by-laws and whether it was actually the church which terminated the Tubiolos' membership, no one other than the church was sued for interfering with the Tubiolos' membership; and the church has always claimed the termination as its own act. Thus, neither the plaintiffs nor the defendant assert that this was not "the act of the church."

constitutional mandate against establishment of religion and the decisions of this Court on related, but different, questions.

Pursuant to the First and Fourteenth Amendments this Court has repeatedly held that courts may decide church property ownership disputes using neutral legal principles, but that they have no jurisdiction over disputed ecclesiastical matters. Exactly what constitutes ecclesiastical matters is not, as yet, specified by this Court. Meanwhile, the lower courts stretch and strain to reach beyond their proper jurisdiction, in order to hear cases involving just such internal church disputes, while mislabeling them as matters of property rights. For example, the North Carolina Court of Appeals decision, below, to allow the trial court to examine the inner workings of the church in deciding to terminate the Tubiolos' membership, in which they were found to have property rights, quotes from, and misinterprets, this Court's decision in *Bouldin v. Alexander*, 82 U.S. 131 (1872), stating "we may inquire whether the resolution of expulsion was the act of the church". *Id.* at 140. *Bouldin, supra,* and some other significant church cases discussed herein involve individuals in disputes over church property. Many lower court decisions fail to recognize that it is constitutionally prohibited for a court to exercise jurisdiction where there is no church property in dispute and where the church alone is the only party on a given side of an ecclesiastical case, for in that instance, the court is improperly entangled in the inner workings of the church. Whatever that court's decision is, it amounts to establishment of that court's version of religion.

The most frequently quoted of this Court's relevant early decisions is *Watson v. Jones*, 80 U.S. 679 (1871). That case revolved around a lengthy and convoluted dispute over a tract of real property claimed by warring factions of a church, divided over the biggest moral question of the day,

slavery. In deciding whether the lower court had erred when it determined the ownership and right to use the church property, Mr. Justice Miller stated:

> We think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them. *Id.* at 727;

and, further:

> The right to organize voluntary religious associations to assist in the expressions and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith of all the individual members, congregation, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to

> establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for. *Id.* at 729.

The following year this Court determined a similar church real property dispute by reference to the deed and other documentation showing ownership. The real property was held by trustees for the benefit of the church. Certain church member-beneficiaries had attempted to divest the trustees of their status and had barred the trustees from the premises. In reaching its decision, the court refused to consider whether some parties were no longer church members, stating that it could not do so:

> This is not a question of membership of the church, nor of the rights of members as such. It may be conceded that we have no power to revise or question ordinary acts of church discipline, or of excision from membership. We have only to do with rights of property. As we said in Shannon v. Frost, we cannot decide who ought to be members of the church, nor whether the excommunicated *have been regularly or irregularly cut off.* We must take the fact of excommunication as conclusive proof that the persons exscinded are not members. But we may inquire whether the resolution of expulsion was the act of the church, or of persons who were not the church and who consequently had no right to excommunicate others. *Bouldin v. Alexander,* 82 U.S. 131, 140 (1872). Citation omitted. (emphasis added)

It is the latter portion of this excerpt which the North Carolina Court of Appeals misinterpreted, and which many other jurisdictions have seized upon in order to retain jurisdiction over ecclesiastical disputes when those courts cannot extricate the property issue from the ecclesiastical dispute. *Bouldin, supra,* did not involve a church as a party - only individuals suing each other over church property - and therein lies one important distinction making that portion of *Bouldin, supra,* inapplicable to church membership disputes. The *Bouldin, supra,* decision specifically ruled out jurisdiction over disputed acts of a church. Yet, as is shown herein, the lower state and federal courts remain confused over the meaning of this decision.

Watson and *Bouldin, supra,* first fashioned the rule that courts may not become embroiled in questions of religious doctrine or exercise, sometimes referred to as the 'ecclesiastical abstention' rule, but that they may, neutrally, decide disputes over church property. However, the numerous, factually distinguishable cases brought in the various lower courts over the intervening century have resulted in significant unanswered questions with regard to this rule. In fact, there is so much disagreement among the various jurisdictions on questions of ecclesiastical matters as to give the appearance of randomness. Currently, there exist no clear criteria regarding ecclesiastical matters. *See,* for example, *Suspension or Expulsion from Church or Religious Society and the Remedies Therefor,* 20 A.L.R. 2d 421 (2005). Clarification is urgently needed.

In 1929 this Court considered a dispute over a right to income from an appointment to a chaplaincy in a Catholic church under the terms of a trust and pursuant to changed prerequisites for appointment as chaplain - again a dispute over church property entwined with a religious matter. The ecclesiastical court of the church claimed exclusive jurisdiction over the entire case. The lower (civil) court

found that the terms of the trust in existence at its inception governed the appointment of the chaplain and on that basis ruled in plaintiff's favor. The appellate court overruled that decision and this Court agreed as follows:

> Because the appointment is a canonical act, it is the function of the church authorities to determine what the essential qualifications of a chaplain are and whether the candidate possesses them. In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise. *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1, 7, 50 S. Ct. 5, 16 (1929).

With the *Gonzalez*, decision, *supra*, the "fraud, collusion or arbitrariness" exception to the ecclesiastical abstention rule was suggested, in dictum, and it has been used to further obfuscate the rule by lower court decisions thereafter. This Court clarified the utility of such an exception in *The Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich*, 426 U.S. 696, 96 S. Ct. 2372 (1976) as follows:

> We have concluded that whether or not there is room for "marginal civil court review" under the narrow rubrics of "fraud" or "collusion" when church tribunals act in bad faith *for secular purposes*, no "arbitrariness" exception in the sense of an inquiry whether the decisions of the highest ecclesiastical tribunal of a hierarchical church complied

> with church laws and regulations is consistent with the constitutional mandate that civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law. For civil courts to analyze whether the ecclesiastical actions of a church judicatory are in that sense "arbitrary" must inherently entail inquiry into the procedures that canon or ecclesiastical law supposedly requires the church judicatory to follow, or else into the substantive criteria by which they are supposedly to decide the ecclesiastical question. But this is exactly the inquiry that the First Amendment prohibits; recognition of such an exception would undermine the general rule that religious controversies are not the proper subject of civil court inquiry, and that a civil court must accept the ecclesiastical decisions of church tribunals as it finds them. *Id.* at 713, 2382. (emphasis added)

On a separate entanglement issue and just a few years prior to *Serbian, supra,* this Court decided *Lemon v. Kurtzman,* 403 U.S. 602 (1971). In considering the constitutionality of 2 state statutes providing financial assistance to church-affiliated schools, this Court enunciated clear criteria and stated the tests which courts must use in evaluating similar statutes. At that time the law was so unclear on the subject that Mr. Chief Justice Burger wrote: "Candor compels acknowledgment, moreover, that we can only dimly perceive the lines of demarcation in this extraordinarily sensitive area of constitutional law. The language of the Religion Clauses of the First Amendment is

at best opaque, particularly when compared with other portions of the Amendment." *Id.* at 612. This is still true as regards questions of jurisdiction over ecclesiastical matters such as church membership, and a similarly clear statement of criteria must come from this Court to guide lower courts in determining what, exactly, amounts to an ecclesiastical dispute from which courts must abstain.

Another of this Court's relatively few decisions relevant to ecclesiastical disputes clarified the rule that the First Amendment protects the autonomy of religious institutions' decisions regarding clergy. That decision considered *Watson, supra,* as follows:

> The [Watson] opinion radiates, however, a spirit of freedom for religious organizations, an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine. Freedom to select the clergy, where no improper methods of choice are proven, we think, must now be said to have federal constitutional protection as a part of the free exercise of religion against state interference. *Kedroff et al. v. St. Nicholas Cathedral of Russian Orthodox Church in North America,* 344 U.S. 94, 116, 73 S. Ct. 143, 154 (1952).

It is now necessary that the freedoms enunciated in *Watson and Kedroff, supra,* be applied to other ecclesiastical matters such as church membership, where there is no church property involvement.

I. The lower federal and state courts[3] are in irreconcilable conflict over the interpretation of the ecclesiastical abstention rule and many are in direct conflict with the relevant decisions of this Court.

A. North Carolina decisions.

The decision below conflicts with this Court's decisions, discussed herein, because it grants jurisdiction to civil courts over church discipline where there is no dispute over church property nor any allegations of fraud or collusion. It does so by creating an individual property interest in church membership and extending jurisdiction to disputes over that property.

In so doing, the decision of the court below goes beyond the bounds imposed by North Carolina's own pre-*Serbian* definition of a "purely ecclesiastical" matter, stated in *The Western Conference of Original Free Will Baptists of North Carolina v. Miles*, 129 S.E.2d 600, 259 N.C. 1 (1963). In that case, the Supreme Court of North Carolina examined a real property dispute where separate church factions claimed ownership. Ordering a new trial, that court stated:

> The legal or temporal tribunals of the State have no jurisdiction over, and no concern with, purely ecclesiastical questions and controversies. An ecclesiastical matter is one which concerns doctrine, creed, or form of worship of the church, *or the adoption and enforcement within a religious association of needful laws and regulations for the government of membership, and the power of excluding from such associations those deemed unworthy of membership by the legally constituted authorities*

---

[3] Research uncovers few church cases initially filed in federal court presumably because diversity would exist only in rare cases. Many of the state cases are refused review by the state's highest court.

> *of the church*; and all such matters are within the province of church courts and their decisions will be respected by civil tribunals. Citations omitted. *Id.* at 606, 10. (emphasis added)

While this decision would seem to preclude the Tubiolos from challenging their membership termination by challenging "the adoption and enforcement" of the church's "needful" by-laws, *Miles, supra*, also included the following contradictory statement:

> Civil courts adjudicate ecclesiastical matters only when civil property rights are involved, and then only when their determination is necessary and incident to the adjudication of civil or property rights, and will go no further in considering ecclesiastical matters than is necessary for a determination of the case before it. Where property rights are involved, ecclesiastical questions are to be determined in accordance with the laws, customs and usages of the church involved and decisions by authorized church tribunals *will be accepted by the courts as conclusive on such questions, unless, it has been held, they clearly violate the church law* or are in conflict with the law of the state. Citations omitted. *Id.* at 11, 606. (emphasis added)

Surely the latter statement contradicts the former and undermines the religious freedoms described in this Court's decisions by allowing courts to "adjudicate ecclesiastical matters", to inquire into church "laws, customs and usages" wherever "property rights are involved". In order to circumvent the ecclesiastical abstention rule, the courts of North Carolina need only to conjure a property

interest, however remotely related to the dispute, in order to retain jurisdiction.

B. The District of Columbia courts are in conflict with this Court and show confusion over the application of the ecclesiastical abstention rule.

In an action factually somewhat more amenable to civil court jurisdiction than that of the Tubiolos, former church members sued their church *and* its officers for damages for termination of their church membership in *Burgess v. Rock Creek Baptist Church, et al.*, 734 F. Supp. 30 (1990). There, the U.S. District Court for the District of Columbia dismissed the case for lack of jurisdiction over what it deemed an ecclesiastical matter. That opinion carefully applied this Court's decision in *Jones v. Wolf*, 443 U.S. 595, 604, 99 S. Ct. 3020, 3026 (1979) and its "neutral principles" doctrine:

> The Supreme Court held that "a state is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute."... However, in this case involving the plaintiff's entitlement to continued church membership, her reliance on the neutral principles doctrine is misplaced. As the *Wolf* Court's language quoted above demonstrates, this approach applies only to church *property* disputes. *Burgess, supra*, at 32. Emphasis in original.

Most recently, however, the District of Columbia Court of Appeals disagreed with this pronouncement. In *Meshel v. Ohev Sholom Talmud Torah, et al.*, 869 A.2d 343 (2005), members of a religious organization sued to compel arbitration over a disputed real property conveyance. That decision states:

> Although no party has raised this point here, one judge of the United States District Court for the District of Columbia has inferred from this history that the "neutral principles of law" doctrine applies only in the context of church property disputes. [Citations omitted.] ...we have never taken such a restrictive view of the applicability of the "neutral principles of law" doctrine, and we have readily applied its constitutionally required analysis to disputes involving claims of negligent accounting and defamation. More important, we can think of no legitimate reason why the Establishment Clause would permit civil courts to resolve property disputes, but not others, according to objective, well-established, and purely secular legal principles. There is nothing about church property disputes that makes them uniquely susceptible to judicial resolution through the application of neutral principles of law. *Id.* at 357.

This decision fails to take notice of the fact that the only internal church disputes over which the civil courts have jurisdiction are those where church property, and not governance, is in dispute[4]. The point of *Burgess* was that, because it involved church governance by way of termination of church membership, and did not involve church property at all, the courts have no jurisdiction to exercise by using neutral principals of law. Hence, church property issues in dispute are a *prerequisite* to the application of neutral principles of law by the civil courts.

---

[4] Criminal court proceedings against an individual church official for criminal wrongdoing are not prohibited by the First Amendment, nor are civil suits for damages resulting from criminal or tortious behavior as these behaviors are not protected by the First Amendment.

That the Court of Appeals in *Meshel, supra,* focused on the arbitration contract sought to be enforced, while losing sight of the underlying church property dispute, demonstrates that the level of understanding of this aspect of the Establishment Clause in the lower courts remains as "dim" and "opaque" as it was when Mr. Justice Burger delivered the opinion in *Lemon v. Kurtzman, supra.* This is so even though this Court stated the "neutral principles" doctrine in 1969 as follows:

> Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. *Presbyterian Church v. Hull Church,* 393 U.S. 440, 449, 89 S. Ct. 601, 606 (1969).

C. At least one federal court has acknowledged confusion over "whether the Supreme Court, if confronted with an internal dispute within a congregational church, would follow the Serbian analysis in all respects."

The court in *First Baptist Church of Glen Este v. State of Ohio,* 591 F. Supp. 676 (S.D. Ohio 1983) uttered this lament in its decision in a declaratory judgment action brought under 42 U.S.C.A. § 1983. That action was brought by church members and a minister alleging that the lower court's orders in a prior suit amounted to state usurpation of internal control of a church and a violation of their civil First Amendment

rights. Prior to suit, certain members had unsuccessfully attempted to remove a minister from the church. In response, the minister scheduled a vote, by the entire congregation, on whether to terminate their membership status. But, before the vote took place, these members filed suit requesting a permanent injunction preventing their ouster. The injunction was granted. The judge who granted it was made a defendant in the federal court action brought by the church under 42 U.S.C.A. § 1983.

The federal court granted the declaratory relief sought, with the effect of removing the injunction against terminating the church memberships, but it went on to demonstrate its confusion over the meaning of the abstention rule by stating terms under which a court *may* review a church's membership termination decision as follows:

> Civil courts must insure that an aggrieved church member has exhausted all internal "rights of appeal" before any inquiry is made into internal church matters. Only after such appeal rights have been exhausted can a court determine that the highest church judicatory body has spoken on the matter.

This analysis, while clearly referring to it, is in direct conflict with this Court's pronouncement in *Watson, supra,* that civil courts are bound by the decisions of "the highest of these church judicatories *to which the matter has been carried...*" Emphasis added. *Watson v. Jones,* 80 U.S. 679, 727 (1871).

Another creative basis used by a plaintiff seeking federal civil court intervention in a church membership termination dispute was a federal RICO action, brought to prevent excommunication from an Orthodox Jewish community. *Grunwald v. Bornfreund,* 696 F. Supp. 838

(E.D.N.Y. 1988). The plaintiff alleged that the result of excommunication would be ostracism and could involve physical injury to his person as well. That court reached the same end result as did the court in *Glen Este, supra,* but it appears to be in accordance with this Court's prior decisions in *Watson, Bouldin, Gonzalez and Serbian, supra.* The *Grunwald* decision states:

> Excommunication is not a harm for which courts will provide a remedy, and it is not within the "usages and principles of law," 28 U.S.C. § 1651(a), for a court to interfere with an excommunication... The mere expulsion from a religious society, with the exclusion from a religious community, is not a harm for which courts can grant a remedy. *Grunwald, supra,* at 840.

D. State court decisions vary widely

In a state church membership case the Court of Appeals of Ohio determined that a civil court lacks jurisdiction to determine whether a church member's expulsion from a congregational church was performed in accordance with its by-laws and internal rules. In *Howard v. Covenant Apostolic Church, Inc., et al.,* 705 N.E.2d 385 (1997)[5] a terminated church member sued the church along with its pastor and trustees for damages resulting from his termination.

In doing so, the court noted that courts retain jurisdiction in cases involving congregational churches to determine whether the proper authority made the decision

---

[5] Appeal to the Ohio Supreme Court was dismissed and discretionary review was not allowed, but 2 dissenters would have allowed the appeal. *Howard v. Covenant Apostolic Church, Inc., et al.,* 81 Ohio St.3d 1416, 688 N.E.2d 1043. As with *Howard* and the case at bar, many state religion cases are refused review by their highest courts.

about church discipline. This seems to defy the *Watson, supra,* decision, in the same way that *Glen Este, supra,* seems to defy it. Even so, the court applied the abstention rule more faithfully than do some of the other cases discussed herein:

> Appellant misinterprets the cases permitting judicial determination of the proper church authority to make internal disciplinary decisions when he states that secular courts have authority to determine whether a church has followed its own by-laws or constitution. So long as the appropriate church authority has made the decision, the issue of whether the church followed its internal procedures is a matter of church governance and discipline into which a secular court is prohibited from inquiring. *Howard, supra,* at 387, citations and footnotes omitted.

The Supreme Court of Iowa, however, has taken a completely different route and has reached the conclusion that it does have jurisdiction over a dispute between a church and its member. *Kliebenstein v. Iowa Conference for the United Methodist Church, et al.,* 663 N.W.2d 404 (2003), was brought as a defamation action. In it the plaintiff sued for damages resulting from a letter published to church members and non-members referring to plaintiff as "the spirit of Satan". The lower court granted summary judgment to the church and its officials pursuant to First Amendment principles, finding that the inflammatory phrase was a "purely ecclesiastical term, deriving its meaning from religious dogma". *Id.* at 406. The Court of Appeals agreed with this interpretation of the phrase. The Supreme Court, however, found a way to retain jurisdiction. By finding the words 'spirit' and 'satanic' in non-religious

dictionaries, it determined that this phrase, "spirit of Satan" has a secular meaning which could be interpreted in the defamation action without determining ecclesiastical matters, particularly because the letter was published to non-church members.

SUMMARY

The lower courts are in disarray as to the jurisdiction of civil courts over ecclesiastical matters and as to the application of the ecclesiastical abstention rule and its exceptions for fraud and collusion. Confusion exists as to whether *Watson* and *Serbian, supra,* apply to congregational churches, or only to those with a hierarchical structure. Property interests, rather than church property, have been judicially created, then manipulated into disputes in order to justify deciding church matters. As shown above, a workable definition of 'ecclesiastical' and a clear test of matters to which 'neutral principles of law' may be applied are lacking. This case offers an ideal opportunity for the resolution of the lower courts' confusion because it presents the abstention question cleanly. It is undisputed that the Church stands behind the termination of the Tubiolos' church membership and that no church property issues are involved. Additionally, because there are no individual defendants in this matter, the focus falls squarely on an internal matter of church discipline. The only remaining question is whether the civil court is constitutionally prohibited from reviewing the disciplinary action of the church.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Paul I. Klein,
Counsel of Record
Katherine Freeman
Klein & Freeman, PLLC
4521 Sharon Road, Suite 150
P.O. Box 221648
Charlotte, NC 28222
(704) 442-0660

Counsel for Petitioner

May 27, 2005

APPENDIX

TABLE OF CONTENTS

Page

Order of
The Honorable Kenneth C. Titus
Superior Court of Orange County, North Carolina
Re: Denying Defendant's Motion to Dismiss;
Deferring Ruling on Defendant's Motion for
Summary Judgment Pending Completion of
Discovery; Certifying Order for Appeal
entered February 5, 2003 ..... 1a

Opinion of
The Honorable Sanford L. Steelman, Jr.
Court of Appeals of North Carolina
entered December 7, 2004 ..... 3a

Order of
The Honorable Paul M. Newby
Supreme Court of North Carolina
Re: Dismissing Defendant's Notice of Appeal;
Denying Defendant's Petition for Discretionary Review
entered March 3, 2005 ..... 11a

Complaint,
With Exhibits,
entered October 8, 2002 ..... 13a

Exhibits:

A. Articles of Incorporation of
Abundant Life Church, Inc.
dated September 8, 1982 ..... 25a

Complaint,
With Exhibits,
entered October 8, 2002, continued:

B. Letter to
David Smith from
Joseph Marion
Re: Request for Production of Records,
With Attachment,
dated August 22, 2002 ..... 29a

Attachment:

N.C. Gen. Stat. § 55A-16-01, 02
undated 32a

C. Letter to
John and Vickie Tubiolo from
Abundant Life Church
Re: Termination of Church Membership
dated September 5, 2002 ..... 37a

D. Letter to
Joseph Marion from
David Smith
Re: Declining Request for
Production of Records,
With Attachment,
dated September 16, 2002 ..... 41a

Attachment:

Excerpt of
Constitution and Bylaws of
Abundant Life Church, Inc.
undated 44a

Complaint,
With Exhibits,
entered October 8, 2002, continued:

E. Letter to
David Smith from
Joseph Marion
Re: Request for Production of Documents
dated September 19, 2002 .....46a

F. Articles of Restatement for
Nonprofit Corporation of
The Abundant Life Christian
Academy Foundation
dated April 24, 1996.....48a

Answer to Complaint
entered December 10, 2002 .....55a

Defendant's Motion to Dismiss
and/or Summary Judgment,
With Attachments,
entered December 23, 2002 .....58a

Attachments:

Affidavit of Michael Mayer
sworn December 16, 2002 .....59a

Affidavit of David Smith
sworn December 16, 2002 .....61a

Affidavit of John Tubiolo
sworn January 22, 2003 .....63a

Affidavit of Vickie Tubiolo
sworn January 22, 2003 .....70a

Transcript of Hearing before
The Honorable Kenneth C. Titus
Superior Court of Orange County, North Carolina
on January 27, 2003 ..... 76a

N.C. Gen. Stat. § 7A-27
undated 95a

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 02 CVS 1342

STATE OF NORTH CAROLINA

COUNTY OF ORANGE

JOHN TUBIOLO and wife, VICKIE TUBIOLO, Plaintiff,	)	
	)	**ORDER**
vs.	)	
ABUNDANT LIFE CHURCH, INC., Defendant.	)	

[ENTERED: FEBRUARY 5, 2003]

This cause having come on to be heard before the undersigned Judge presiding at a civil session of Orange County Superior Court on January 27, 2003, on Motion of the Defendant to dismiss the Complaint pursuant to N.C.R.C.P. § 12(b)6, and upon reading the matters of record and hearing the arguments of counsel, this Court being of the opinion that the Motion should be denied, it is

Ordered that the Motion be, and the same hereby is, denied, and it is further

Ordered that the alternative Motion, for summary judgment, not be considered until after completion of discovery, and it is further

Ordered that this Court finds, pursuant to N.C.R.C.P. § 54, that this Order affects a substantial right of the Defendant and that there is no just reason to delay an appeal therefrom.

This the 3 day of February, 2003.

/s/ Kenneth C. Titus
Honorable Kenneth C. Titus
Superior Court Judge Presiding

COURT OF APPEALS OF NORTH CAROLINA

JOHN TUBIOLO and wife, VICKIE TUBIOLO, Plaintiffs, v. ABUNDANT LIFE CHURCH, INC., Defendant

NO. COA03-471

[ENTERED: DECEMBER 7, 2004]

Appeal by defendant from order entered 3 February 2003 by Judge Kenneth C. Titus in Orange County Superior Court. Heard in the Court of Appeals 28 January 2004.

Harriss & Marion, P.L.L.C., by Joseph W. Marion, for plaintiff-appellees.

Crews & Klein, P.C., by Paul I. Klein and Katherine Freeman, for defendant-appellant.

STEELMAN, Judge.

Abundant Life Church, Inc. (defendant), is a corporation, organized and existing under the provisions of Chapter 55A of the North Carolina General Statutes (North Carolina Nonprofit Corporation Act). Defendant was incorporated on 8 September 1982. Both plaintiffs were founding members of the defendant. Plaintiff, John Tubiolo, was one of the incorporators and an initial director of the defendant. For a period of nearly two years prior to 5 September 2002, plaintiffs had disputes with the pastor and leadership of the church. Plaintiffs contend that the disputes arose out of the improper handling of finances by defendant. Defendant contends that plaintiffs were in "open rebellion" against the church leadership, and persistently engaged in conduct detrimental to the body of the church. On 22 August 2002, plaintiffs, through counsel, demanded copies of certain financial records of the church. By letter dated 5 September 2002, defendant's Church Council terminated plaintiffs' membership based upon scriptural

discipline. The letter set forth six separate bases for the termination, and recited efforts made by the church leadership to reconcile with the plaintiffs.

Following receipt of the letter terminating their membership in defendant, plaintiffs filed this action on 8 October 2002. Their complaint sought the following relief: (1) a preliminary and permanent injunction enjoining defendant from terminating their membership; (2) a court order directing defendant to allow plaintiffs to inspect certain records of defendant; (3) a court order directing defendant to conduct an annual meeting after reasonable notice to all members.

Defendant moved to dismiss plaintiffs' complaint for failure to state a claim upon which relief can be granted under Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. In the alternative, defendant moved for summary judgment under Rule 56 of the Rules of Civil Procedure, and filed affidavits in support of this motion. Plaintiffs filed affidavits in opposition to the motion for summary judgment.

By order dated 3 February 2003, Judge Titus denied defendant's motion to dismiss and deferred ruling upon defendant's motion for summary judgment pending completion of discovery. The order specifically found that it "affects a substantial right of the Defendant and that there is no just reason to delay an appeal therefrom" pursuant to the provisions of Rule 54(b) of the Rules of Civil Procedure. From the entry of this order, defendant appeals.

In its first assignment of error, defendant asserts that the trial court erred in not granting its motion to dismiss. We agree, in part.

The gravamen of defendant's argument, made both before the trial court and this Court, is that the courts of this state should not become involved in matters of church

membership and church discipline under the provisions of the First Amendment to the Constitution of the United States of America and section 13 of Article I of the Constitution of the State of North Carolina.

Based upon this theory, defendant's motion would have been more properly made under Rule 12(b)(1) as a motion to dismiss for lack of subject matter jurisdiction. See *Emory v. Jackson Chapel First Missionary Baptist Church*, __ N.C. App. __, 598 S.E.2d 667 (2004). "[Q]uestions of subject matter jurisdiction may properly be raised at any point, even in the Supreme Court." *Forsyth County Bd. of Social Services v. Division of Social Services*, 317 N.C. 689, 692, 346 S.E.2d 414, 416 (1986)(citations omitted). In *Williams v. New Hanover County Bd. of Educ.*, 104 N.C. App. 425, 428, 409 S.E.2d 753, 755 (1991)(*quoting Harrell v. Whisenant*, 53 N.C. App. 615, 617, 281 S.E.2d 453, 454 (1981)), this Court held that a "motion is properly treated according to its substance rather than its label," and treated defendant's motion as one under Rule 12(b)(1) rather than Rule 12(b)(6). In the instant case, we treat defendant's motion to dismiss as one made under Rule 12(b)(1) to dismiss for lack of subject matter jurisdiction.

The appropriate standard of review in this case is *de novo*. *Emory*, __ N.C. App. at __, 598 S.E.2d at 669. In considering a motion to dismiss for lack of subject matter jurisdiction, it is appropriate for the court to consider and weigh matters outside of the pleadings. *Tart v. Walker*, 38 N.C. App. 500, 502, 248 S.E.2d 736, 737 (1978).

Plaintiffs' complaint asserts three bases for their claim that defendant improperly terminated their membership: (1) the grounds stated in the termination letter were not accurate; (2) the persons purporting to terminate their membership were without authority to take that action; and (3) the termination was not conducted in a fair and reasonable manner and in good faith as required by N.C. Gen. Stat. § 55A-6-31(a).

The courts cannot become entangled in ecclesiastical matters of a church.

> The courts of the State have no jurisdiction over and no concern with purely ecclesiastical questions and controversies. . . . [T]he courts do have jurisdiction as to civic, contract and property rights which are involved in or arise from a church controversy, including the right to determine the type organization of a particular church.

Braswell v. Purser, 282 N.C. 388, 393, 193 S.E.2d 90, 93 (1972). Our courts have defined an ecclesiastical matter as:

> "one which concerns doctrine, creed, or form of worship of the church, or the adoption and enforcement within a religious association of needful laws and regulations for the government of membership, and the power of excluding from such associations those deemed unworthy of membership by the legally constituted authorities of the church; and all such matters are within the province of church courts and their decisions will be respected by civil tribunals."

Eastern Conference of Original Free Will Baptists v. Piner, 267 N.C. 74, 77, 147 S.E.2d 581, 583 (1966), *overruled in part on different grounds by Atkins v. Walker*, 284 N.C. 306, 200 S.E.2d 641 (1973)(*quoting Western Conference of Original Free Will Baptists v. Miles*, 259 N.C. 1, 10-11, 129 S.E.2d 600, 606 (1963).

Membership in a church is a core ecclesiastical matter. The power to control church membership is ultimately the power to control the church. It is an area where the courts of this State should not become involved. This stricture applies regardless of whether the church is a

congregational church, incorporated or unincorporated, or an hierarchical church.

> The prohibition on judicial cognizance of ecclesiastical disputes is founded upon both establishment and free exercise clause concerns. By adjudicating religious disputes, civil courts risk affecting associational conduct and thereby chilling the free exercise of religious beliefs. Moreover, by entering into a religious controversy and putting the enforcement power of the state behind a particular religious faction, a civil court risks "establishing" a religion.

Crowder v. Southern Baptist Convention, 828 F.2d 718, 721 (11th Cir. 1987).

As to the first basis for challenging the termination of their membership, that the grounds for termination are inaccurate, plaintiffs acknowledge in their brief that:

> Plaintiffs do not suggest that the trial court has the authority to examine or decide whether the *grounds* set forth in the purported termination letter were accurate or whether such grounds were legally sufficient to cause Plaintiffs' membership to be terminated. (emphasis in original).

The Courts will not become involved in determining whether grounds for termination of church membership are doctrinally or scripturally correct. The trial court erred, and should have dismissed this as a basis for plaintiffs' claim that their membership was improperly terminated.

The second basis for plaintiffs' assertion that their membership was improperly terminated was that the persons purporting to terminate their membership were

without authority to take that action. Attached to plaintiffs' complaint was a copy of what appears to be a portion of the defendant's bylaws. Article IV is entitled "Membership", and section 3 provides:

> The members shall seek to live exemplary Christian lives so as to bring honor to Christ and uphold the witness of the church. Should the need for church discipline arise among the membership, the Senior Pastor and the Church Council shall be responsible for administering such discipline, up to and including dismissal from membership.

The letter dismissing the plaintiffs from the membership of defendant, dated 5 September 2002, purports to be from the Church Council. Plaintiffs' complaint asserts that no bylaws were ever adopted by the defendant, and that the signatories of the 5 September 2002 letter were without authority to sign the letter. While the Courts can under no circumstance referee ecclesiastical disputes, they can adjudicate "property disputes", provided that this can be done without resolving underlying controversies over religious doctrine. *Atkins v. Walker*, 284 N.C. 306, 316-17, 200 S.E.2d 641, 648 (1973); *citing Presbyterian Church in United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 21 L. Ed. 2d 658 (1969).

We hold that the plaintiffs' membership in the defendant is in the nature of a property interest, and that the courts do have jurisdiction over the very narrow issue of whether the bylaws were properly adopted by the defendant. *See Bouldin v. Alexander*, 82 U.S. 131, 139-140, 21 L. Ed. 69, 71-72 (1872)("we cannot decide who ought to be members of the church, nor whether the excommunicated have been regularly or irregularly cut off. . . . But we may inquire whether the resolution of expulsion was the act of the church, or of persons who were not the church and who consequently had no right to excommunicate others."). This

inquiry can be made without resolving any ecclesiastical or doctrinal matters. In so holding we find the facts of this case to be distinguishable from those in our recent opinion of *Emory v. Jackson Chapel First Missionary Baptist Church*, __ N.C. App. __, 598 S.E.2d 667 (2004). In *Emory*, the issue was a change in the form of governance of the church, from an unincorporated association to a corporation. No membership rights were implicated in this change. Thus, in *Emory*, we held that the controversy only bore a "tangential relationship to property rights." In this case, we hold that the plaintiffs' membership rights were directly implicated. We thus affirm the trial court's denial of the defendant's motion to dismiss as to the second basis of plaintiffs' first claim.

The third basis for plaintiffs' assertion that their membership was improperly terminated was that the purported termination was in violation of the provisions of N.C. Gen. Stat. § 55A-6-31(a). This provision deals with the termination, expulsion, and suspension of members of a nonprofit corporation existing under the provisions of Chapter 55A, and reads as follows:

> (a) No member of a corporation may be expelled or suspended, and no membership may be terminated or suspended, except in a manner that is fair and reasonable and is carried out in good faith.

The fact that defendant is a corporation under Chapter 55A does not alter our analysis of whether the courts of this state have jurisdiction in ecclesiastical disputes. Plaintiffs would have the courts direct that churches cannot terminate membership without following certain due process procedures including notice and an opportunity to be heard. This we refuse to do. A church's criteria for membership and the manner in which membership is terminated are core ecclesiastical matters protected by the First and Fourteenth Amendments of the United States Constitution and section

13 of Article I of the Constitution of the State of North Carolina. The trial court erred and should have dismissed this as a basis for plaintiffs' claim that their membership was improperly terminated.

As to the plaintiffs' remaining claims seeking an order allowing plaintiffs to inspect certain records of defendant, and seeking an order directing defendant to conduct an annual meeting, these claims are dependent upon plaintiffs being members of defendant at the time of the filing of this lawsuit. If the trial court determines that the bylaws were duly adopted, then the courts have no jurisdiction over the termination of the plaintiffs' membership in defendant. Since the termination occurred prior to the filing of this action, plaintiffs would lack standing to pursue these two claims against the defendant, and the trial court should dismiss plaintiffs' action.

This matter is remanded to the trial court for further proceedings consistent herewith.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS.

Chief Judge MARTIN and Judge GEER concur.

SUPREME COURT OF NORTH CAROLINA

John TUBIOLO and wife, Vickie Tubiolo

v.

ABUNDANT LIFE CHURCH, INC.

No. 29P05.

[ENTERED: MARCH 3, 2005]

From NC Court of Appeals (COA03-471). From Orange (02CVS1342).

ORDER

Upon consideration of the notice of appeal from the North Carolina Court of Appeals, filed by Defendant on the 11th day of January 2005 in this matter pursuant to G.S. 7A-30 (substantial constitutional question), the following order was entered and is hereby certified to the North Carolina Court of Appeals: the notice of appeal is

> "Dismissed ex mero motu by order of the Court in conference, this the 3rd day of March 2005.
> s/Newby, J.
> For the Court"

Upon consideration of the petition filed on the 11th day of January 2005 by Defendant in this matter for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference,
this the 3rd day of March 2005.
s/Newby, J.
For the Court"

359 N.C. 326, 2005 WL 674432 (N.C.)

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 02 CVS 1342

STATE OF NORTH CAROLINA

COUNTY OF ORANGE

JOHN TUBIOLO and wife, VICKIE TUBIOLO, Plaintiff,	)	
vs.	)	**COMPLAINT**
ABUNDANT LIFE CHURCH, INC., Defendant.	)	

[ENTERED: OCTOBER 8, 2002]

The Plaintiffs, complaining of the Defendant, allege and say as follows:

1. The Plaintiffs are citizens and residents of Orange County, North Carolina.

2. The Defendant is a non-profit corporation organized under the laws of the State of North Carolina with offices in Orange County, North Carolina.

3. The primary business of Defendant is the operation of a church in Hillsborough, North Carolina known as Abundant Life Church (hereinafter the "Church").

4. Plaintiff John Tubiolo was a founding organizer and member of the Defendant corporation A copy of the Articles of Incorporation, filed September 8, 1982 and bearing John Tubiolo's signature, is attached hereto as Exhibit A.

5. The Articles of Incorporation appoint Plaintiff, John Tubiolo, and two other individuals, Everett H. Kennedy and Henry C. Johnson, Jr. as the initial Board of Directors. The Articles also appointed the same three individuals as the Board of Directors of the corporation (i.e., in addition to being the initial Board of Directors).

6. In the early years of its existence, all decisions regarding the Church were made by a congregational meeting with all members voting on such decisions.

7. The Board of Directors identified above never adopted any bylaws for the corporation. On information and belief, no bylaws were ever adopted by the members of the Church. As such, there has been no legal action taken by the corporation to appoint any individuals as directors or representatives with capacity to act for the corporation.

COUNT ONE - WRONGFUL TERMINATION

8. Over the past four or five years, Plaintiffs have become increasingly concerned that the financial records and financial transactions concerning the Church have not been adequately disclosed to the members.

9. After failing to receive requested information from the Church and from various individuals in control of the church finances, Plaintiffs retained an attorney and requested certain financial documents pertaining to operation of church business, as well as certain corporate documents listed in NCGS § 55A-

16-01(e). A copy the letter to the Church referred to above is attached hereto as Exhibit B.

10. Plaintiffs, as members of the Church, had the absolute right to inspect many of the records requested in the letter (i.e. all documents described in NCGS § 55A-16-01(e)) and with regard to the remaining financial records, most of such statements are required to be furnished upon written demand pursuant to NCGS § 55A-16-20.

11. In response to the request submitted by the Plaintiffs' attorney, David Smith, Senior Pastor of the Church, by letter dated August 29, 2002, denied Plaintiff's request and refused to provide the requested records to Plaintiffs. Further, the aforementioned letter contains many untrue and libelous statements, and otherwise wrongfully assailed the good character of the Plaintiffs. Thereafter, by letter dated September 5, 2002, Plaintiffs received a letter from the Church, signed by ten individuals purporting to be "Ministers" of the Church, which letter purported to terminate the Plaintiff's membership in the Church. A copy of this letter is attached hereto as Exhibit C.

12. This attempted termination of Plaintiffs' membership in the Church was wrongful, illegal, and ineffective for the following reasons:

a. Most of the alleged "grounds" recited in the letter as the basis for the termination are inaccurate.

b. The ten individuals signing the letter have no legal authority to terminate Plaintiffs' membership or the membership of any other member of the Church.

c. The attempted termination of Plaintiffs' membership was in violation of NCGS § 55A-6-31(a) which requires that any proceeding to terminate a member of an organization such as the Church should be conducted in a manner that is "fair and reasonable and is carried out in good faith." These requirements were not met in that Plaintiffs were never given any notice that their membership rights were in question; Plaintiffs were never informed of the allegations which were the basis of the attempted termination; Plaintiffs were never provided with the right to offer any evidence or explanation rebutting the allegations; and the only action which could have precipitated the attempted termination was Plaintiffs' request for records, pursuant to statutory authority, as more fully described in paragraph 9 above, and such action is not a justifiable basis for termination of membership.

13. Based on the foregoing, Plaintiffs are entitled to a preliminary and permanent injunction enjoining Defendant from terminating the membership Plaintiffs in the Church.

COUNT TWO - INSPECTION AND COPYING OF RECORDS

14. The allegations contained in paragraphs 1 through 13 of the Complaint are incorporated herein by reference as if set out herein word for word.

15. As members of the Church, Plaintiffs were entitled to inspect and copy the Church records requested in the letter dated August 22, 2002, attached hereto as Exhibit C. Specifically, these records include those itemized in NCGS § 55A-16-01(e):

1) Its Articles of Incorporation or restated Articles of Incorporation and all amendments to them currently in effect;
2) Its Bylaws or Restated Bylaws and all amendments to them currently in effect;
3) Resolutions adopted by its members or Board of Directors relating to the number or classification of directors or to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;
4) The minutes of all membership meetings and records of all actions taken by the members without a meeting pursuant to NCGS § 55A-7-04 or GS 55A-7-08, for the past three years;
5) All written communications to members generally within the past three years and the financial statements, if any, that have been furnished or would have been

required to be furnished to a member upon demand under NCGS 55A-16-20 during the past three years; and

6) A list of the names and business or home addresses of its current directors and officers.

16. In addition, Plaintiffs are entitled to inspect and copy the following church records:

a. Minutes of all meetings of its members and Board of Directors or purported Board of Directors.

b. A record of all actions taken by the members or the Board of Directors or purported directors without a meeting.

c. A record of all actions taken by committees of the purported Board of Directors in place of the Board of Directors on behalf of the corporation.

d. Detailed income and expense statements for 2001 and 2002 through July 31.

e. A balance sheet as of December 31, 2001 and July 31, 2002.

f. Similar income and expense statements and balance sheets for Abundant Life Christian Academy (hereinafter the "Academy").

g. A copy of the signed settlement statement, promissory note, and deed of trust for any loan closings occurring within the last twelve months which refinanced any outstanding mortgages on any certain church property.

17. Plaintiffs are requesting the records listed in paragraph 16 above for the following purposes: With regard to records listed in paragraph 16a through 16c, Plaintiffs, as founding and lifelong members of the Church, are aware of no Bylaws ever being adopted, either by the initial Board of Directors, or by the membership of the Church. Nevertheless, the attorney for the Plaintiffs received a letter from David Smith, Senior Pastor of the Church, referencing a "Constitution and Bylaws" of the Church. Plaintiffs' attorney thereafter requested a complete copy of the Constitution and Bylaws, and Minutes for any meeting where such documents were approved. Like other requests made on behalf of the Plaintiffs, the Church refused to honor this request. Copies of the letter from David Smith referencing the "Constitution and Bylaws", and the follow-up letter from Plaintiff's attorney, are attached hereto as Exhibits D and E respectively. With regard to the records requested in paragraph 16d through 16g, Plaintiff requests these records for the purpose of confirming basic financial income and expense figures, finding out if the Church keeps separate financial records for a school known as Abundant Life Christian Academy, which is not a separate entity but is operated under the auspices of Abundant Life Church, Inc.. Further, at a meeting with the Church finance committee on March 14, 2002, Mike Mayer, known as "Minister of Finance & Business" stated that several loans were refinanced within a period shortly before said meeting. However, Plaintiffs can find no public record of any mortgages being executed by the Church.

18. On April 28, 1995, Articles of Incorporation for a North Carolina non-profit corporation known as "The Abundant Life Christian Academy Foundation"

(hereinafter the "Foundation") were filed by Everett Victor Knight, Incorporator, an individual associated with the Academy. The Articles appointed four individuals as the initial Board of Directors, including David Smith, Senior Pastor of the Church. These Articles were refiled on April 24, 1996 in essentially the same form. A copy of the Articles of Restatement are attached hereto as Exhibit F.

19. The primary purpose of the Foundation, as stated in Article Four of the Restated Articles is "to establish and maintain a method to derive income for general operating expenses, facilities, and scholarships from sources other than tuition for Abundant Life Christian Academy..."

20. On information and belief, a number of financial transactions between the Foundation and the Church (including Abundant Life Christian Academy, which is not a separate entity but is part of the Church) have occurred. In addition, on information and belief, the Foundation set up a for-profit business known as VisionNet Network Services, (hereinafter "VisionNet") which business consumed a substantial portion of the assets of the Foundation and, indirectly, assets of the Church.

21. Despite attempts by the Plaintiffs to obtain clarification of the relationship of the Church with the Foundation, and the Foundation with VisionNet, Plaintiffs have not received any such documentation of the intertwining relationships existing.

22. Plaintiffs are entitled to the following records of the Church:

    a. Copies of any and all checks or other records of disbursement from the

Church, including all operations conducted under the auspices of the Church, including the Academy, to the Foundation, as well as copies of any memoranda, receipts, or other documents purporting to explain the purpose of such disbursements.

b. Copies of any and all receipts, deposit slips, or other documents evidencing payments received by the Church including any and all subsidiary operations including the Academy, from the Foundation, as well as copies of any memoranda, receipts, or other documents purporting to explain the purpose of such disbursements.

23. The demand for records set forth in paragraphs 15, 16, and 21 above is made in good faith and for a proper purpose, and the records requested are directly connected to such purpose. To the extent that Plaintiffs have not made such demand clear in the past, such demand is reiterated herein, and Plaintiffs hereby give Defendant notice that such inspection and copying with regard to all records listed herein shall occur at 9:00 a.m. on the 7th day November, 2002.

24. Plaintiffs are entitled to a court order requiring the inspection of the records demanded herein, and to recover its reasonable attorneys fees and other costs incurred in obtaining such order.

COUNT THREE - CLAIM FOR ANNUAL MEETING

25. The allegations contained in paragraphs 1 through 19 of the Complaint are incorporated herein by reference as if set out herein word for word.

26. On information and belief, there has not been an annual meeting of the members of the Church since approximately 1997.

27. Plaintiffs are entitled, pursuant to NCGS § 55A-7-01 and 55A-7-03 to an order requiring that an annual meeting of the Church be held forthwith after reasonable notice to all members.

WHEREFORE, Plaintiffs pray unto the Court as follows:

1. That the Court order the attempted termination of Plaintiffs memberships be rescinded and revoked.

2. That the Court order the Defendant to permit the Plaintiffs to inspect and copy the records requested in paragraphs 15, 16, and 21 of the Complaint.

3. That Plaintiffs recover their reasonable attorneys fees allowable under NCGS § 55A-16-04(c).

4. That the Court order an annual meeting of the Church forthwith.

5. That the relief set forth above be awarded on an expedited basis.

6. For such other and further relief as to the Court seems just and proper.

This the 8th day of October, 2002.

HARRISS & MARION, PLLC
Attorneys for Plaintiffs

By: /s/ Joseph W. Marion
Joseph W. Marion
3326 Chapel Hill Boulevard, Suite 210-C
Post Office Box 51009
Durham, North Carolina 27717-1009
(919) 493-8421

STATE OF NORTH CAROLINA

VERIFICATION

COUNTY OF DURHAM

John Tubiolo and Vickie Tubiolo, being first duly sworn, depose and say that they have read the foregoing instrument and that the facts are true of their own knowledge, except those matters and things set forth upon information and belief, and as to those matters and things they believe it to be true.

/s/ John Tubiolo
John Tubiolo

/s/ Vickie Tubiolo
Vickie Tubiolo

Sworn to and subscribed before me, this
the 8th day of October, 2002.

/s/Cynthia G. Bradsher (SEAL)
Notary Public

My Commission Expires: June 5, 2003

EXHIBIT A

ARTICLES OF INCORPORATION
OF
ABUNDANT LIFE CHURCH, INC.
(Name of Corporation)

A NON-PROFIT CORPORATION

We, the undersigned natural persons of the age of twenty-one years or more, acting as incorporators for the purpose of creating a non-profit corporation under the laws of the State of North Carolina, as contained in Chapter 55A of the General Statutes of North Carolina, entitled "Non-Profit Corporation Act", and the several amendments thereto, do hereby set forth:

1. The name of the corporation is Abundant Life Church, Inc.

2. The period of duration of the corporation shall be Perpetual
(May be perpetual or for a limited period)

3. The purposes for which the corporation is organized are:

To Promote and foster the Christian religion and do any and all things necessary or reasonable in connection therefor.

4. The corporation is to have the following class or classes of members: (If there are to be no members, so state.)

One Class

5. Directors of the corporation shall be elected in the following manner:

As provided - by laws.

6. The address of the initial registered office of the corporation is as follows:

Street address (if non, so state) _____
120 South Churton Street
City or town Hillsborough, N. C.
County Orange
The name of the initial registered agent of the corporation at the above address is _____
Everett H. Kennedy

7. The number of directors constituting the initial board of directors shall be three, and the names and addresses (including street and number, if any) of the persons who are to serve as directors until the first meeting of the corporation or until their successors are elected and qualified are:

NAME	STREET ADDRESS (if none, so state)	CITY OR TOWN
Everett H. Kennedy	120 South Churton Street	Hillsborough, N.C.
Henry C. Johnson, Jr.	Route # 1, Box 315	Hillsborough, N. C.
John Tubiolo	Route # 4, Box 230	Hillsborough, N. C.

8. The names and addresses (including street and number, if any) of all the incorporators are:

NAME	STREET ADDRESS (if none, so state)	CITY OR TOWN
Everett H. Kennedy	120 South Churton Street	Hillsborough, N.C.
Henry C. Johnson, Jr.	Route # 1, Box 315	Hillsborough, N. C.
John Tubiolo	Route # 4, Box 230	Hillsborough, N. C.

9. In addition to the powers granted corporations under the laws of the State of North Carolina, the corporation shall have full power and authority to make final decision involving any and all transactions, such as buying, selling, remodeling or building pertaining to said Corporation, and or any business transactions pertaining thereto.

10. * A quorum of the Board of Directors of this Corporation shall consist of the Corporation President and any One Director thereof, and a quorum may transact any business of the Corporation at any meeting thereof. The Board of Directors consist of:

Everett H. Kennedy	President
Henry C. Johnson, Jr.	Vice-President
John Tubiolo	Secretary/Treasurer

The Officers of this Corporation shall be a President, a Vice-President, a Secretary, and a Treasurer.

11. In the event of dissolution, the residual assets of the organization will be turned over to one or more organizations which themselves are exempt as organizations described in sections 501(c) (3) and 170 (c) (2) of the Internal Revenue Code, or to the Federal, State or Local government for exclusive public purpose.

IN TESTIMONY WHEREOF, we have hereunto set our hands, this the 6th day of September, A.D. 1982.

/s/Everett H. Kennedy
/s/ Henry C. Johnson, Jr.
/s/ John Tubiolo

STATE OF North Carolina
COUNTY OF Orange

This is to certify that on the 6th day of September, A.D. 1982 before me, a Notary Public personally appeared

Everett H. Kennedy
Henry C. Johnson, Jr.
John Tubiolo

who, I am satisfied, are the persons named in and who executed the foregoing Article of Incorporation, and I having first made known to them the contents thereof, they did each acknowledge that they signed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

In Testimony Whereof, I have hereunto set my hand and official seal, this the 6th day of September, A.D. 1982.

EVA F. KENNEDY NOTARY PUBLIC ORANGE COUNTY, N.C.

/s/ Eva F. Kennedy
My Comm. Expires 9/29/85

*Insert any provisions desired to be included in the Articles of Incorporation such as: regulation of internal affairs of the corporation, any matters required to be set forth in the by-laws, etc. See Chapter 55A of the General Statutes.

EXHIBIT B

HARRISS & MARION, P.L.L.C.
ATTORNEYS AT LAW

WILLIAM G. HARRISS
JOSEPH W. MARION
ROBERT S. POOLE

Telephone (919) 493-8421
Facsimile (919) 493-8425

Suite 210-C
Duke Forest Place
3326 Chapel Hill Boulevard
Durham, North Carolina 27707

Post Office Box 51009
Durham, North Carolina 27717-1009

August 22, 2002

Pastor David Smith
ABUNDANT LIFE CHURCH
US 70 at Orange High School Road
Hillsborough, NC 27278

Dear Pastor Smith:

I represent John and Vicki Tubiolo, both of whom are members of Abundant Life Church. John Tubiolo, as I am sure you remember, was one of the founding members of the church.

Over the last several years, my clients have become concerned that the financial reporting relative to the Church and its various operations has been inadequate. You and the other directors of the church have a fiduciary duty to the

members of the Church to discharge your duties in good faith, and to see that the Church maintains appropriate accounting records.

North Carolina law provides that a member of a non-profit corporation such as Abundant Life Church has the right to inspect and copy certain records of the corporation. In lieu of making a formal request for such inspection, my clients would ask that you provide to me, on or before September 4, 2002, copies of the following records:

1. Detailed income and expense statements for 2001 and 2002 through July 31. (a copy of a partial statement for 2001 is enclosed so that you understand the format I am requesting.)

2. A balance sheet as of December 31, 2001 and July 31, 2002. (Likewise, a sample as of April 30, 2001 is enclosed.)

3. Similar income and expense statements, and balance sheets, for Abundant Life Christian Academy. It is my understanding the school maintains separate accounting records that are not included in the Abundant Life Church accounting records.

4. A copy of the signed settlement statement for the loan closing occurring within the last twelve (12) months which refinanced the outstanding mortgage on certain church property.

A second concern of my clients is whether or not there has been approved by the congregation any form of corporate governments in the form of bylaws or a similar

such document. To the extent that such bylaws are existing and have been approved, please provide a copy of same.

In the event that you are unwilling to provide the above records, please consider this letter a request, pursuant to North Carolina General Statute § 55A-16-01 *et seq.* (copy enclosed) to inspect and copy all accounting records of the Church, and all records listed under North Carolina General Statute § 55A-16-01(e) [see enclosed statute]. The inspection and copying shall take place at the Church offices on Friday, September 6, 2002 at 9:00 a.m., unless we agree to a different time. I sincerely hope this step is unnecessary.

I am providing a copy of this letter to the other leaders in the Church who are or may be considered on the Board of Directors of the Church so that all parties are aware of my request.

I look forward to hearing from you.

Sincerely,

HARRISS & MARION, PLLC

/s/ Joseph W. Marion
Joseph W. Marion

JWM/cb

cc
- Pastor Otis Autry
- Ken Brunson
- Dr. Gordon Carlisle
- Pastor Mickey Cartagena
- Wade Heverly
- Michael Keaton
- Mike Mayer
- Ted Olson
- Dr. Chester Palumbo
- Fred Tapp
- Mark Caryle
- Joel Gillis
- Patti Wiley

members or directors without a meeting pursuant to G.S. 55A-7-04, [G.S.] 55A-7-08, or [G.S.] 55A-8-21, and a record of all actions taken by committees of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its members, in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) Its articles of incorporation or restated articles of incorporation and all amendments to them currently in effect;

(2) Its bylaws or restated bylaws and all amendments to them currently in effect;

(3) Resolutions adopted by its members or board of directors relating to the number or classification of directors or to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(4) The minutes of all membership meetings, and records of all actions taken by the members without a

meeting pursuant to G.S. 55A-7-04 or G.S. 55A-7-08, for the past three years;

(5) All written communications to members generally within the past three years, and the financial statements, if any, that have been furnished or would have been required to be furnished to a member upon demand under G.S. 55A-16-20 during the past three years;

(6) A list of the names and business or home addresses of its current directors and officers; and

(7) Repealed by Session Laws 1995, c. 539, s. 29, effective July 29, 1995. (1955, c. 1230; 1969, c. 875, s. 6; 1985 (Reg. Sess., 1986), c. 801, s. 31; 1993, c. 398, s. 1; 1995, c. 539, s. 29.)

Legal Periodicals. – For survey of 1973 case law on the admissibility of computer printouts, see 52 N.C.L. Rev. 903 (1974).

For Article "Toward a Codification of the Law of Evidence in North Carolina", see 16 Wake Forest L. Rev. 669 (1980).

For note, "The Nonprofit Corporation in North Carolina: Recognizing a Right to Member Derivative Suits," see 63 N.C.L. Rev. 999 (1985).

CASE NOTES

Editor's Note. – *The cases below were decided under the Nonprofit Corporation Act adopted in 1955.*

Purpose of Section – This section was designed to give broad legislative approval to the use in evidence of corporate computer records. However, in declaring such computer records admissible in evidence it does not deal with the special problems of reliability created by the use of

computers. State v. Springer, 283 N.C. 627, 197 S.E.2d 530 (1973).

Section authorizes admission of corporate computer records under appropriate safeguards deemed sufficient to render them trustworthy. State v. Springer, 283 N.C. 627, 197 S.E.2d 530 (1973).

But Does Not Preclude Judicial Development of Standards for Admission. – The section does not, and was not designed to, preclude judicial development of workable standards for the admission of computerized business records generally. State v. Springer, 283 N.C. 627, 197 S.E.2d 530 (1973).

Conditions Under Which Printouts Are Admissible. – Printout cards or sheets of business records stored on electronic computing equipment are admissible in evidence, if otherwise relevant and material, if: (1) The computerized entries were made in the regular course of business, (2) the entries were made at or near the time of the transaction involved, and (3) a proper foundation for such evidence is laid by testimony of a witness who is familiar with the computerized records and the methods under which they were made so as to satisfy the court that the methods, the sources of information, and the time of preparation render such evidence trustworthy. State v. Springer, 283 N.C. 627, 197 S.E.2d 530 (1973); State v. Stapleton, 29 N.C. App. 363, 224 S.E.2d 204, appeal dismissed, 290 N.C. 554, 226 S.E.2d 513 (1976).

Computer printout evidence may be refuted to the same extent as business records made in books of account. State v. Springer, 283 N.C. 627, 197 S.E.2d 530 (1973).

Testimony as to contents of computer printout is inadmissible under the best evidence rule. State v. Springer, 283 N.C. 627, 197 S.E.2d 530 (1973).

Failure to Lay Foundation for Admission. – Computer printout referred to in oral testimony is inadmissible where no foundation is laid for its admission and the printout itself is not offered in evidence. State v. Springer, 283 N.C. 627, 197 S.E.2d 530 (1973).

§ 55A-16-02. Inspection of records by members.

(a) A member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in G.S. 55A-16-01(e) if the member gives the corporation written notice of his demand at least five business days before the date on which the member wishes to inspect and copy.

(b) A member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (c) of this section and gives the corporation written notice of his demand at least five business days before the date on which the member wishes to inspect and copy:

(1) Excerpts from any records required to be maintained under G.S. 55A-16-01(a), to the extent not subject to inspection under G.S. 55A-16-02(a);

(2) Accounting records of the corporation; and

(3) Subject to G.S. 55A-16-05, the membership list.

(c) A member may inspect and copy the records identified in subsection (b) of this section only if:

(1) The member's demand is made in good faith and for a proper purpose;

(2) The member describes with reasonable particularity the purpose and the records the member desires to inspect; and

(3) The records are directly connected with this purpose.

(d) This section does not affect:

(1) The right of a member to inspect records under G.S. 55A-7-20 or, if the member is in litigation with the corporation, to inspect the records to the same extent as any other litigant; or

(2) The power of a court, independently of this Chapter, to compel the production of corporate records for examination.

(e) A member of a corporation that has the power to elect, appoint, or designate a majority of the directors of another domestic or foreign corporation, whether nonprofit or business, shall have inspection rights with respect to the records of that other corporation. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 31; 1993, c. 398, s. 1.)

NORTH CAROLINA COMMENTARY

In certain respects, the inspection rights provided by this section are more limited than those set forth in former G.S. 55A-27, which provided inspection rights with respect to "all books and records." However, unlike prior law, inspection rights are now granted with respect to the records of subsidiary corporations. For certain records, subsection (c) imposes conditions other than a "proper purpose," which was the only requirement under the prior law.

EXHIBIT C

ABUNDANT LIFE CHURCH

512 U.S. 70 East
Hillsborough, NC 27278
info@abundantlifechurch.com September 5, 2002

PASTORAL STAFF
Senior Pastor
Pastor David Smith
Minister of Music
Pastor Otis Autry
Minister of Pastoral Care
Pastor Mickey Cartagena
Minister of Education
Dr. Gordon Carlisle

CHURCH MINISTRIES
Ministry of Worship & Prayer
Pastor Otis Autry
Ministry of Doorkeepers
Ken Brunson
Ministry of Education
Dr. Gordon Carlisle
Ministry of Watchcare
Pastor Mickey Cartagena
Ministry of Service
Wade Heverly
Ministry of Helps
Michael Keaton
Ministry of Finance & Business
Mike Mayer
Ministry of World Witness
Ted Olson
Ministry of the Family
Dr. Chester Palumbo

The Ministry of Fellowship
Fred Tapp
Abundant Life Christian Academy
Dr. Gordon Carlisle, Administrator
Christian Life School of Theology
Lorrie Tatum, Academic Dean

FOR HIS
CAUSE
FAMILY
FELLOWSHIP
EDUCATION
YOUTH
SPORTS

John and Vickie Tubiolo
Miller Road
Hillsborough, NC 27278

Dear John and Vickie:

God places utmost emphasis on unity, for it is in unity that His power is released and His work is accomplished. The Bible makes it clear that God deplores strife and those who cause dissension (1 Corinthians 14:33; Proverbs 6:19). It is in this spirit and with this understanding that we, the Church Council of Abundant Life Church, address this letter to you.

In the family of God, our deepest desire is to be supportive and loving and do everything we can to bring about reconciliation. Scriptural discipline is never easy, especially when it involves senior members of the church who have been here for so many years. However, we believe we have put forth every effort to help you to become reconciled with this body and its leadership and have been unable to bring that about. For this reason, and with a great deal of sadness, we find that we must take the position that you are not

members in good standing with Abundant Life Church. Here are some of the factors that brought us to this position:

1. For nearly two years you have been in open rebellion against the leadership of the church. (Romans 13:1-2; 1 Samuel 15:23)

2. You participated in meetings that were detrimental to the church and its effectiveness and have persisted in murmuring against the church and its leaders. (1 Thessalonians 5:12-13)

3. You participated in a negative letter writing campaign and distributed materials which cast aspersion toward church leaders and questioned their integrity (even distributing this material to worshipers on church property). This caused great damage within the church and great embarrassment among outsiders. (Proverbs 26:20-21)

4. You have shown a disrespectful attitude in the church sanctuary, even going as far as to disrupt the Sunday morning worship services, causing great pain and damage to hundreds of people, and have steadfastly refused to offer an apology. You will probably never know the harm you caused on the morning of March 11, 2001. Not only were many people traumatized by your outrageous behavior, but word of that spectacle has spread far and wide and has been a terrible mark of shame against our church. (Ecclesiastes 5:1)

5. When admonished by the Pastor, you rebuffed his counsel and refused to submit to his spiritual authority, even when confronted with Scripture. (Hebrews 13:17)

6. You have dared to undertake legal action against the church and its leaders in direct violation to *scriptures*. This is only the latest in a long series of offences on your part that have necessitated this action. (1 Corinthians 6:6-7)

We acknowledge that we have been very slow in taking this action. In Titus 3:10, we are instructed to "Warn a divisive person once, and then warn him a second time. After that, have nothing to do with him." In our desire to be patient and forgiving, we have gone far beyond those guidelines. We regret any damage to the flock that our delay might have caused and are sure that at this point we have no alternative but to follow Scriptural principles and acknowledge that you have excluded yourselves from this fellowship.

We would like for you to understand that we are unified and in complete agreement with the emphasis and the direction of this body of believers, and with the position we have taken in regards to you.

/s/ Chester Palumbo
/s/ Fred Tapp
/s/ Ken Brunson
/s/ Ted Olson
/s/ Michael Keaton
/s/ Michael Mayer
/s/ Wade Heverly
/s/ Gordon Carlisle
/s/ Mickey Cartagena
/s/ Otis Autry

EXHIBIT D

ABUNDANT LIFE CHURCH

512 U.S. 70 East
Hillsborough, NC 27278
info@abundantlifechurch.com September 16, 2002

PASTORAL STAFF
Senior Pastor
Pastor David Smith
Minister of Music
Pastor Otis Autry
Minister of Pastoral Care
Pastor Mickey Cartagena
Minister of Education
Dr. Gordon Carlisle

CHURCH MINISTRIES
Ministry of Worship & Prayer
Pastor Otis Autry
Ministry of Doorkeepers
Ken Brunson
Ministry of Education
Dr. Gordon Carlisle
Ministry of Watchcare
Pastor Mickey Cartagena
Ministry of Service
Wade Heverly
Ministry of Helps
Michael Keaton
Ministry of Finance & Business
Mike Mayer
Ministry of World Witness
Ted Olson
Ministry of the Family
Dr. Chester Palumbo

The Ministry of Fellowship
Fred Tapp
Abundant Life Christian Academy
Dr. Gordon Carlisle, Administrator
Christian Life School of Theology
Lorrie Tatum, Academic Dean

FOR HIS
CAUSE
FAMILY
FELLOWSHIP
EDUCATION
YOUTH
SPORTS

HARRISS & MARION, P. L. L. C.
Attorneys at Law
Suite 210-C
3326 Chapel Hill Boulevard
Durham, NC 27707

ATTN: Joseph W. Marion

Dear Mr. Marion:

We received your letter dated September 12, 2002, in connection with your clients, John and Vicki Tubiolo.

With regard to the termination of the Tubiolos' membership at Abundant Life, you obviously have no frame of reference to help you determine its validity. This action, taken by the Church Council, was justified and, in fact, mandated by Scripture and by the bylaws of the church. For your convenience, I am enclosing a copy of this section of our Constitution and Bylaws.

The Tubiolos have frustrated every effort we have put forth to be at peace with them and have a history of using materials they obtain to sow discord and undermine the leadership of the church. We believe that an important part of our "fiduciary duty" is to protect this ministry from those who would do it harm. Therefore, we will not accede to their demands to inspect and copy our records and would ask that they not come on the premises for other than peaceful purposes.

Should the Tubiolos desire to repent and apply for restoration, this option is open to them. Meanwhile, we remain dedicated to the work to which God has called us and sincerely pray for an end to this distraction.

Sincerely,

/s/ David Smith
David Smith, Senior Pastor

Enclosure

SECTION 4. We Believe that coming to faith in Christ results in one's being dynamically changed by God's Spirit who comes to live in us. The Bible calls that being "born again." We believe this is a gift of grace, through faith in Jesus Christ and is our only means of salvation. (Romans 3:21-30; Galatians 4:4-7)

SECTION 5. We Believe in the baptism of believers in water as an act of obedience to the command of Christ and as a statement of identification with Christ in His death, burial, and resurrection. (Matthew 28:18, 19; Acts 2:38)

SECTION 6. We Believe that responsible Christian conduct is expected of everyone who claims to be a follower of Christ and that love one for another is the true evidence of Christian Discipleship. (Hebrews 12:14; II Timothy 2:19; I Corinthians 15:34; Philippians 1:11; I Peter 1:16; John 13:35; Galatians 5:19-25)

SECTION 7. We Believe that all believers are indwelt by the Holy Spirit and should be filled with the Spirit and that this brings spiritual power and the gifts of the Holy Spirit in testimony and service. (Acts 2:4; Acts 10:44-46; Acts 19:2; Acts 19:6; Acts 1:8; Acts 2:42, 43; Matthew 3:11)

SECTION 8. We Believe in the resurrection of all people; those who have trusted Christ unto eternal life; those who have not unto eternal death. (John 5:24, 28, 29)

SECTION 9. We Believe that healing and restoration is provided for through the redeeming work of Christ and is the privilege of all believers. (Isaiah 53:5; Mark 16:17-18; John 5:6-14; I Peter 2:24)

SECTION 10. We Believe in the literal, personal return of Jesus Christ to judge the wicked, reward the righteous, and

bring to fruition His Kingdom upon the earth. (Revelation 11:15 & 22:12)

ARTICLE IV
MEMBERSHIP

SECTION 1. Membership shall be open to those who confess faith in Christ, agree with our Statement of Faith, and promise loyalty to the Church.

SECTION 2. New members shall be received who have made a public confession of faith in the Lord Jesus Christ and an expression of commitment to this local Body of believers. They shall faithfully support the Church with their attendance and giving of offerings, respect and submit to the leaders God has raised up, and live in harmony with the Church body.

SECTION 3. The members shall seek to live exemplary Christian lives so as to bring honor to Christ and uphold the witness of the church. Should the need for church discipline arise among the membership, the Senior Pastor and the Church Council shall be responsible for administering such discipline, up to and including dismissal from membership.

SECTION 4. Membership shall be terminated by death, transfer to another church, voluntary absence from the church for a period of one year, or by Scriptural discipline.

EXHIBIT E

HARRISS & MARION, P.L.L.C.
ATTORNEYS AT LAW

WILLIAM G. HARRISS
JOSEPH W. MARION
ROBERT S. POOLE

Telephone (919) 493-8421
Facsimile (919) 493-8425

Suite 210-C
Duke Forest Place
3326 Chapel Hill Boulevard
Durham, North Carolina 27707

Post Office Box 51009
Durham, North Carolina 27717-1009

September 19, 2002

VIA FAX 732-1566

David Smith, Senior Pastor
Abundant Life Church

Re: My clients: John and Vicki Tubiolo

Dear Pastor Smith:

I received your letter dated September 16, 2002 today.

My clients are not aware of any bylaws ever being adopted by the Church, nor can they recall ever seeing a copy of any bylaws ever adopted by the Church. My clients also asked several former Council members regarding this, and none had any memory of bylaws being legally approved. As you

may know, there are certain legal requirements for properly adopting bylaws or other rules of corporate governance.

Accordingly, I would request on behalf of my clients that you fax to me at the above number copies of signed and dated corporate minutes for any meeting where the "Constitution and Bylaws" mentioned in your letter were approved. I would also request a complete, signed and dated copy of the Constitution and Bylaws.

Please fax these documents to me by 5:00 pm tomorrow, September 20, 2002.

As you know, John Tubiolo was a founding member of Abundant Life Church. I seriously question the basis and authority on which you have attempted to terminate his and his wife's membership.

Please be advised that if we do not receive a satisfactory and timely response to the above requests, I intend to immediately pursue all legal remedies available to my clients.

Sincerely,

/s/ Joseph W. Marion
Joseph W. Marion

EXHIBIT F

State of North Carolina
Department of the Secretary of State

ARTICLES OF RESTATEMENT
FOR NONPROFIT CORPORATION

Pursuant to §55A-10-07 of the General Statutes of North Carolina, the undersigned corporation hereby submits the following for the purpose of restating its Articles of Incorporation.

1. The name of the corporation is: The Abundant Life Christian Academy Foundation

2. The text of the Restated Articles of Incorporation is attached.

3. (*Check a, b, c, and/or d, as applicable.*)

a.____ These Restated Articles of Incorporation were adopted by the board of directors and do not contain an amendment.

b. xx These Restated Articles of Incorporation were adopted by the board of directors and contain an amendment not requiring member approval. (*Set forth a brief explanation of why member approval was not required for such amendment.*) The Foundation has no members.

c.____ These Restated Articles of Incorporation contain an amendment requiring member approval, and member approval was obtained as required by Chapter 55A of the North Carolina General Statutes.

d. These Restated Articles of Incorporation contain an amendment requiring approval by a person whose approval is required pursuant to N.C.G.S. §55A-10-30, and such approval was obtained.

4. These articles will be effective upon filing, unless a delayed date and/or time is specified: _____

This the 8th day of April, 1996

The Abundant Life Christian Academy Foundation
Name of Corporation

/s/ D. E. Haskins
Signature

D. E. Haskins President
Type or Print Name and Title

NOTES

1. Filing fee is $10 unless the Restated Articles of Incorporation include an amendment, in which case the filing fee is $25. This document and one exact or conformed copy of these articles must be filed with the Secretary of State.

(*Revised July 1994*)

CORPORATIONS DIVISION
300 N SALISBURY STREET
RALEIGH, NC 27603-5909

RESTATED ARTICLES OF INCORPORATION OF THE ABUNDANT LIFE CHRISTIAN ACADEMY FOUNDATION

The undersigned person of the age of eighteen (18) years or more, for the purpose of establishing a nonprofit corporation under the laws of the State of North Carolina, as contained in Chapter 55A of the General Statutes of North Carolina, entitled "Nonprofit Foundation Act" and the several amendments thereto (the "Nonprofit Foundation Act"), does hereby set forth:

ARTICLE ONE

The name of the corporation is The Abundant Life Christian Academy Foundation (the "Foundation").

ARTICLE TWO

The Foundation is a nonprofit corporation, organized pursuant to the Nonprofit Foundation Act, it does not contemplate pecuniary gain or profit to the members thereof and it is organized for nonprofit purposes only.

ARTICLE THREE

The period of duration of the Foundation shall be perpetual.

ARTICLE FOUR

1. The purposes for which the Foundation is organized include, without limitation, the following:

(A) to establish and maintain a method to derive income for general operating expenses, facilities, and scholarships from sources other than tuition for Abundant Life Christian Academy or other Christian educational purposes. The primary emphasis is to be placed on securing the financial future of Abundant Life Christian Academy in such a manner that any immediacy of need does not overshadow the long term financial security objective of Abundant Life Christian Academy or the Foundation; and

(B) to engage in any other lawful act or activity for which corporations may be organized under the Nonprofit Foundation Act, as it currently exists or as it may hereafter be amended, that may, directly or indirectly, promote the interests of the Foundation or enhance the value of its property; provided, however, that the Foundation will not engage, other than as an insubstantial part of its activities, in activities that are not in furtherance of one or more of the purposes specifically described in subparagraph (A) above.

2. The Foundation does not contemplate pecuniary gain or profit, incidental or otherwise, and no part of the net earnings of the Foundation shall inure to the benefit of, or be distributable to, its directors, trustees, officers or other private persons, except that the Foundation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments

and distributions in furtherance of those purposes set forth in these Articles of Incorporation.

3. No substantial part of the activities of the Foundation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Foundation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

4. Notwithstanding any other provision of these Articles of Incorporation, in the event that the Foundation is determined to qualify for exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law) (the "Code"), the Foundation shall not carry on any activity not permitted to be carried on (a) by a corporation exempt from federal income tax under Code section 501(c)(3) or (b) by a corporation, contributions to which are deductible under Code section 170(c)(2).

5. Upon dissolution, liquidation or other termination of the Foundation, the Board of Directors shall, after paying or making provision for the payment of all liabilities of the Foundation, distribute all of the net assets of the Foundation to such organization or organizations organized and operated exclusively for charitable, religious, scientific, testing for public safety, literary, or

educational purposes which would then qualify under the provisions of Code section 501(c)(3) and regulations promulgated pursuant thereto as they now exist or as they may hereafter be amended, or to the federal government or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by the superior Court in the county in which the principal office of the Foundation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

6. Notwithstanding any of the above statements of purposes and powers, the Foundation shall not engage in any activities or exercise any powers that are not authorized for nonprofit corporations under the Nonprofit Foundation Act.

ARTICLE FIVE

The Foundation shall have no members.

ARTICLE SIX

The street address of the initial registered office of the Foundation is 512 U.S. 70 East, Hillsborough, Orange County, North Carolina 27278, and the name of its initial registered agent at such address is Everett Victor Knight.

ARTICLE SEVEN

The location of the principal office of the Foundation is 512 U.S. 70 East, Hillsborough, North Carolina 27278. The Foundation is located in Orange County.

ARTICLE EIGHT

The number of directors of the Foundation shall be fixed by the Bylaws. Subject to the terms of the Articles of Incorporation, the method of election and removal of directors of the Foundation may be fixed by the Bylaws. The number of directors constituting the initial Board of Directors shall be four (4), and the names and addresses of the persons who are to serve as such initial directors are as follows:

Name	Address
Donnie E. Haskins	1204 South 3rd Street Mebane, NC 27302
David Smith	P. O. Box 129 Hillsborough, NC 27278
Tom Benner	2833 Saddle Drive Durham, NC 27712
Cliff Nixon	111 Hillandale Road Durham, NC 27705

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
02-CVS-1342

STATE OF NORTH CAROLINA

COUNTY OF ORANGE

JOHN TUBIOLO and wife, VICKIE TUBIOLO, Plaintiffs,	)	
v.	)	**ANSWER**
	)	**(Jury Trial**
ABUNDANT LIFE CHURCH, INC., Defendant.	)	**Demanded)**

[ENTERED: DECEMBER 10, 2002]

Defendant, answering the Complaint of the Plaintiffs, by its attorneys, Crews & Klein, P.C., alleges and says as follows:

AS AND FOR A FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted and should be dismissed pursuant to N.C.R.C.P.12(b)(6)

AS AND FOR A SECOND DEFENSE

1. Defendant admits, upon information and belief, each and every allegation contained in Paragraph 1 of Plaintiffs' Complaint.

2. Defendant denies that it has a primary "business" as alleged in Paragraph 3 of Plaintiffs' Complaint, but it admits that its primary mission and purpose is to operate Abundant Life Church in Hillsborough, North Carolina.

3. Defendant denies each and every allegation contained in Paragraphs 6, 7, 10, 12, 13, 15, 16, 20, 21, 22, 23, 24 and 27 of Plaintiffs' Complaint.

4. Defendant denies, for want of knowledge or information sufficient to form a belief as to the truth of said allegations, each and every allegation contained in Paragraph 8 of Plaintiffs' Complaint.

5. Defendant denies each and every allegation contained in Paragraph 11 of Plaintiffs' Complaint except it admits that it, through its Senior Pastor David Smith, denied the requests embodied in Exhibit "B" to Plaintiffs' Complaint by letter dated August 29, 2002, and that Exhibit "C", which letter speaks for itself, is a copy of a letter sent to Plaintiffs on or about September 5, 2002 by Defendant.

6. Defendant denies each and every allegation contained in Paragraph 17 of Plaintiffs' Complaint except admits the allegations contained in the penultimate sentence of said Paragraph as well as the transmittal and receipt of letters, of which Exhibits "D" and "E" are true copies, and denies, for want of knowledge or information sufficient to form a belief as to the truth of said allegations, the allegations contained in the last sentence of said Paragraph.

7. Answering the allegations contained in Paragraphs 14 and 25 of Plaintiffs' Complaint, Defendant repeats, reiterates and realleges each and every admission and denial hereinbefore set forth with respect to the allegations of Plaintiffs' Complaint referred to in said Paragraphs 17 and 25, with the same force and effect as if fully set forth hereat.

WHEREFORE, having fully answered Plaintiffs' Complaint, the Defendant respectfully requests that this Court:

(1) hold that the Plaintiffs have and recover nothing of the Defendant;

(2) deny a preliminary and permanent injunction as requested by Plaintiffs;

(3) dismiss Plaintiffs' Complaint;

(4) assess the costs of the action, including attorneys' fees, against the Plaintiffs;

(5) allow all issues so triable to be heard by a jury of twelve persons; and

(6) grant such other, further and different relief as may be deemed just and proper.

This the 9th day of December, 2002.

/s/ Paul I. Klein
Paul I. Klein
CREWS & KLEIN, P.C.
4521 Sharon Road, Suite 150
Post Office Box 221648
Charlotte, North Carolina 28222-1648
Telephone: (704) 442-0660
Attorney for Defendant

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
02 CVS 1342

STATE OF NORTH CAROLINA

COUNTY OF ORANDG

JOHN TUBIOLO and wife VICKI TUBIOLO, Plaintiffs,	)	**MOTION TO DISMISS AND/OR SUMMARY JUDGMENT**
v.	)	
ABUNDANT LIFE CHURCH, INC., Defendant.	)	

[ENTERED: DECEMBER 23, 2002]

Defendant hereby moves, pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure, for an Order dismissing plaintiffs' Complaint on the ground that it fails to state a claim upon which relief can be granted, and in the alternative, moves for summary judgment.

Please take further notice that the Affidavits which may be used in connection with this matter are those of Michael Mayer and David Smith, both sworn to December 16, 2002, and previously served upon plaintiffs' counsel.

This the 23rd day of December, 2002.

/s/ Paul I. Klein
Paul I. Klein
CREWS & KLEIN, P.C.
4521 Sharon Road - Suite 150
Post Office Box 221648
Charlotte, NC 28222-1648
Telephone: (704) 442-0660
Attorneys for Defendant

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
02-CVS-1342

STATE OF NORTH CAROLINA

COUNTY OF ORANGE

JOHN TUBIOLO and wife, VICKIE TUBIOLO, Plaintiffs, v. ABUNDANT LIFE CHURCH, INC., Defendant.	)	**AFFIDAVIT OF MICHAEL MAYER**

STATE OF NORTH CAROLINA

COUNTY OF ORANGE

Michael Mayer, having first been duly sworn, deposes and says:

1. I am over the age of eighteen years, and am a member of the Church Council of Abundant Life Church in Hillsborough, North Carolina. Since the year 2000 I have served as its Minister of Finance and Business.

2. In that capacity, I have interacted with the plaintiff, Joseph Tubiolo, on a number of occasions when he has requested financial records of the defendant Corporation. I have provided him with financial records that we normally distribute to Church members, to wit, monthly budget summaries and income and expense statements, as well as a year-end balance sheet. In addition, I provided to Mr. Tubiolo some interim budget summaries and balance sheets, earlier this year. The income and expense reports and budget summaries provided some detail, but this was not satisfactory to Mr. Tubiolo, who

insisted upon seeing financial records payment by payment. This request was denied. Members of the Church, including Mr. Tubiolo, during the time of his membership, would have access to monthly financial statements, demonstrating what had occurred during that month and what had occurred in the year-to-date period.

3. In September, 2002, by vote of the Church Council, as a matter of Scriptural discipline, the membership of the Tubiolos was terminated. This came about following, and on account of, a lengthy period of attempts at undermining of Church authority by the Tubiolos, disruptive activities on their part including interruption of church services, and persistent innuendoes of financial improprieties. They were more than adequately warned about these activities and the possibility that such might result in Scriptural discipline and the termination of their membership thereby.

4. The only reason that further access to financial records was denied to the plaintiffs was that their good faith and the reasonableness of their requests was seriously questioned in light of the history described in the preceding paragraph.

/s/ Michael Mayer
Michael Mayer

Sworn to before me this the
16 day of December, 2002.

/s/ Katherine G. Lawrence
Notary Public

My Commission Expires: Aug. 31, 2006

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
02-CVS-1342

STATE OF NORTH CAROLINA

COUNTY OF ORANGE

JOHN TUBIOLO and wife, VICKIE TUBIOLO, Plaintiffs,	)	**AFFIDAVIT OF DAVID SMITH**
v.	)	
ABUNDANT LIFE CHURCH, INC., Defendant.	)	

STATE OF NORTH CAROLINA

COUNTY OF ORANGE

David Smith, having first been duly sworn, deposes and says:

1. I am the Senior Pastor of Abundant Life Church in Hillsborough, North Carolina and am a member of the Church Council of Abundant Life Church, Inc., the defendant herein.

2. Exhibit "C" to plaintiffs' Complaint is a true copy of a two page letter initiated and signed by the members of the Church Council, terminating the membership of the Tubiolos in Abundant Life Church, pursuant to Article IV, Section 4 of the By-laws.

3. If the basis for the termination of their membership is not clear by the abundance of Scriptural citations contained in said Exhibit, this action was taken as a measure of "Scriptural discipline" as authorized by the said By-laws.

4. At this time, I affirm the accuracy of all the factual statements contained in said Exhibit.

5. As authorized by the By-laws of Abundant Life Church, Inc., the membership of the Tubiolos terminated on September 5, 2002.

/s/ David Smith
David Smith

Sworn to before me this the
16 day of December, 2002.

/s/ Katherine G. Lawrence
Notary Public

My Commission Expires: Aug. 31, 2006

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 02 CVS 1342

STATE OF NORTH CAROLINA

COUNTY OF ORANGE

JOHN TUBIOLO and wife, VICKIE TUBIOLO, Plaintiff,	)	**AFFIDAVIT OF JOHN TUBIOLO**
vs.	)	
ABUNDANT LIFE CHURCH, INC., Defendant.	)	

John Tubiolo, being first duly sworn, deposes and says:

1. I am the Plaintiff in the above entitled action.

2. I am of the age of majority and competent to testify in this matter.

3. Along with Everett H. Kennedy and Henry C. Johnson, Jr., I was one of the founding members of Abundant Life Church. I was a signator on the Articles of Incorporation (attached to the Complaint herein as Exhibit A).

4. I and the two above mentioned persons, were appointed as the initial and continuing Board of Directors of Abundant Life Church, Inc., the Defendant herein.

5. In the early years of its existence, all decisions regarding the Church were made by a congregational meeting with all members voting on such decisions.

6. The original Board of Directors (identified above) never appointed any successor directors, nor did we ever adopt any bylaws for the corporation. Further, as an active participant in numerous capacities with the Church since inception, there has never been any legal action taken by the Church to adopt any bylaws as such.

7. Following the purported termination of my membership from the Church, my attorney received a letter from David Smith, Pastor of the Church, referring to the "bylaws of the Church". This letter attached to the Complaint as Exhibit D, enclosed a single page excerpt which Pastor Smith referred to as a "Section of our Constitution and Bylaws".

8. The reference in Pastor Smith's letter to a Church "Constitution and Bylaws" was a surprise to me. I requested my attorney to write to Pastor Smith and request copies of signed and dated corporate minutes for any meeting where the "Constitution and Bylaws" mentioned in the letter were approved. We also requested a complete, signed, and dated copy of the Constitution and Bylaws. A copy of my attorney's letter to Pastor Smith is attached to Complaint as Exhibit E. We have never received any Bylaw or Minutes in response to this request.

9. I served as Treasurer for the Church between 1982 and 1987. As such, I have always had an interest in full and fair reporting of the Church's finances to its members. Since approximately 1997, I have become increasingly concerned with the failure of the Church to disclose certain basic financial records. One of my primary concerns arises out of the fact that the Church operates a school known as Abundant Life Christian Academy (hereinafter the

"Academy"), which is not a separate entity but is operated under the auspices of Abundant Life Church, Inc. Thus, for example, any debts of the Academy are legally debts of the Church. Yet the books and records of the Academy are kept entirely separate from the Church and are not disclosed to Church members and have not been disclosed to me, despite my requesting same.

10. A second major concern that I have regarding the finances of the Church pertains to the total amount of debt of both the Academy and the Church, and what collateral has been mortgaged for which debt. There have never been any financial reports for the Academy given out to myself or the congregation since the Academy started in 1986.

11. In the twelve months prior to September 5, 2002, the date of the letter (attached to the Complaint as Exhibit C) purporting to terminate my membership from the Church, I have attended church services on Sunday and Wednesday regularly. During this time, I have requested financial records of the Church from Mike Mayer, a church member involve with the finances of the Church. I have had approximately one brief telephone conversation with Mr. Mayer regarding financial records, and once, on March 14, 2002, met with him and other members regarding questions of finances of the Church. This meeting lasted no more than an hour and I did not receive any additional documents at the meeting, and did not receive adequate answers to my questions regarding mortgages. Also, I have requested financial records from Patty Wiley (Church bookkeeper) approximately 2 or 3 times in the year prior to September 5, 2002.

12. During the year prior to September 5, 2002, I have also attempted to discuss the finances of the Church with Pastor Smith on approximately two occasions. However, I have never received any financial documents or reports from Pastor Smith.

13. In addition to the above, I have discussed my concerns regarding the finances of the Church with my family and with approximately six other current members of the Church.

14. With regard to the list of factors referenced in the September 5, 2002 termination letter, I state the following:

A. I have never been in open rebellion against the leadership of the Church.

B. I have never, in my opinion, participated in meetings that were detrimental to the Church and its effectiveness. I have never engaged in "murmuring" against the Church and its leaders.

C. I have not participated in a negative letter writing campaign against the Church. I have never distributed materials which cast aspersions toward Church leaders and question their integrity. I have never accused the Church leadership of any misappropriation of Church funds.

D. On Sunday, March 11, 2001, an outside speaker came in and spoke to the congregation on Church governance. At the end of his message he stated that we were not a congregational Church. I, as a member of the Church congregation,

stood up and stated "Brother, you're wrong." I said this twice but he did not respond. I then said "I have to say what's on my heart."

E. Following the exchange above, my wife and I received a letter from Pastor Smith. He asked that this not happen again. I accepted his counsel and I have not spoke out again. Although I remained concerned about the finances of the Church, as described above, I did not rebuff his counsel and refuse to submit to his spiritual authority, as there was no further contact about this.

F. Prior to September 5, 2002, the only "legal action" I undertook against the Church was to ask my attorney to write a letter requesting records. A copy of this letter is attached to the Complaint herein as Exhibit B.

G. Prior to the September 5, 2002 letter purporting to terminate my membership, I have never been warned, either in writing or otherwise, about the possibility that any of my actions might result in Scriptural Discipline or termination of membership from the Church.

H. Prior to the September 5, 2002 letter purporting to terminate my membership, I never received any notice, written or otherwise, that a proceeding would be undertaken to consider the termination of my membership. Thus, I was never given any opportunity to hear the

allegations against me, nor was I ever given an opportunity to present any evidence or witnesses in my behalf regarding the issue of termination.

15. Between the meeting with Mike Mayer on March 14, 2002 (described in paragraph 11 above) and September 5, 2002, the only contact I had with any Church Official regarding finances or other concerns I had was the letter from my attorney attached to the Complaint herein as Exhibit B (dated August 22, 2002) and a follow-up letter dated March 28, 2002 to the Church Council and the Finance Committee (copy attached as Exhibit 1).

16. I have never received from the Church any of the records requested in the letter from my attorney to the Church dated August 22, 2002 (attached to the Complaint herein as Exhibit B).

17. I have never received from the Church any of the records listed in paragraph 15 of the Complaint.

18. I have never received from the Church any of the records requested in paragraph 16 of the Complaint. I have never received any of the records listed in paragraph 22 of the Complaint.

19. In March of 2002, Patty Wiley, as directed by Mike Mayer, did provide me with a brief summary "Budget versus Actual Report - January thru December 31, 2001" with very little information. Also, from time to time, certain brief summary reports of income and expenses, usually on a quarterly basis, are posted on a Church bulletin board. I have, from time to time, attempted to copy these reports. Recently, these reports have been

secured behind a glass enclosure. To my knowledge, there has not been a congregational meeting of the Church since approximately 1997.

FURTHER, Deponent saith not.

/s/ John Tubiolo
John Tubiolo

Sworn to and subscribed before me this
the 22nd day of January, 2003.

/s/Cynthia G. Bradsher
Notary Public

My Commission Expires: June 5, 2003

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 02 CVS 1342

STATE OF NORTH CAROLINA

COUNTY OF ORANGE

JOHN TUBIOLO and wife, VICKIE TUBIOLO, Plaintiff,	)	**AFFIDAVIT OF VICKIE TUBIOLO**
vs.	)	
ABUNDANT LIFE CHURCH, INC., Defendant.	)	

Vickie Tubiolo, being first duly sworn, deposes and says:

1. I am the Plaintiff in the above entitled action.

2. I am of the age of majority and competent to testify in this matter.

3. Along with my husband and several others, I was one of the founding members of Abundant Life Church.

4. In the early years of its existence, all decisions regarding the Church were made by a congregational meeting with all members voting on such decisions.

5. Following the purported termination of my membership from the Church, my attorney received a letter from David Smith, Pastor of the Church, referring to the "bylaws of the Church". This letter attached to the Complaint as Exhibit D, enclosed a

single page excerpt which Pastor Smith referred to as a "Section of our Constitution and Bylaws".

6. The reference in Pastor Smith's letter to a Church "Constitution and Bylaws" was a surprise to me. I requested my attorney to write to Pastor Smith and request copies of signed and dated corporate minutes for any meeting where the "Constitution and Bylaws" mentioned in the letter were approved. We also requested a complete, signed, and dated copy of the Constitution and Bylaws. A copy of my attorney's letter to Pastor Smith is attached to Complaint as Exhibit E. We have never received any Bylaw or Minutes in response to this request.

7. Since approximately 1997, I have become increasingly concerned with the failure of the Church to disclose certain basic financial records. One of my primary concerns arises out of the fact that the Church operates a school known as Abundant Life Christian Academy (hereinafter the "Academy"), which is not a separate entity but is operated under the auspices of Abundant Life Church, Inc. Thus, for example, any debts of the Academy are legally debts of the Church. Yet the books and records of the Academy are kept entirely separate from the Church and are not disclosed to Church members and have not been disclosed to me, despite my requesting same.

8. A second major concern that I have regarding the finances of the Church pertains to the total amount of debt of both the Academy and the Church, and what collateral has been mortgaged for which debt. There have never been any financial reports for the Academy given out to myself or the congregation since the Academy started in 1986.

9. In the twelve months prior to September 5, 2002, the date of the letter (attached to the Complaint as Exhibit C) purporting to terminate my membership from the Church, I have attended church services on Sunday regularly. On March 14, 2002, my Husband and I met with Mike Mayer, who helps with Church finances, other members regarding questions of finances of the Church. This meeting lasted no more than an hour and we did not receive any additional documents at the meeting, and did not receive adequate answers to our my questions regarding mortgages.

10. In addition to the above, I have discussed my concerns regarding the finances of the Church with my family and with approximately six other current members of the Church.

11. With regard to the list of factors referenced in the September 5, 2002 termination letter, I state the following:

A. I have never been in open rebellion against the leadership of the Church.

B. I have never, in my opinion, participated in meetings that were detrimental to the Church and its effectiveness. I have never engaged in "murmuring" against the Church and its leaders.

C. I have not participated in a negative letter writing campaign against the Church. I have never distributed materials which cast aspersions toward Church leaders and question their integrity. I have never accused the Church leadership of any misappropriation of Church funds.

D. On Sunday, March 11, 2001, an outside speaker came in and spoke to the congregation on Church governance. At the end of his message he stated that we were not a congregational Church, but an apostolic church, with our pastor as the apostle. When he put the pastor on the same level as Christ, it was more than I could understand. At the end of the service, I stated, "I serve one God and one God only; I serve no man." I repeated, "I serve one God and one God only."

E. Following this exchange, my husband and I received a letter from Pastor Smith. He asked that this not happen again. I accepted his counsel and I have not spoken out again. Although I remained concerned about the finances of the Church, as described above, I did not rebuff his counsel and refuse to submit to his spiritual authority, as there was no further contact about this.

F. Prior to September 5, 2002, the only "legal action" I undertook against the Church was to ask my attorney to write a letter requesting records. A copy of this letter is attached to the Complaint herein as Exhibit B.

G. Prior to the September 5, 2002 letter purporting to terminate my membership, I have never been warned, either in writing or otherwise, about the possibility that any of my actions might result in

Scriptural Discipline or termination of membership from the Church.

H. Prior to the September 5, 2002 letter purporting to terminate my membership, I never received any notice, written or otherwise, that a proceeding would be undertaken to consider the termination of my membership. Thus, I was never given any opportunity to hear the allegations against me, nor was I ever given an opportunity to present any evidence or witnesses in my behalf regarding the issue of termination.

12. Between the meeting with Mike Mayer on March 14, 2002 (described in paragraph 11 above) and September 5, 2002, the only contact I had with any Church Official regarding finances or other concerns I had was the letter from my attorney attached to the Complaint herein as Exhibit B (dated August 22, 2002) and a follow-up letter dated March 28, 2002 to the Church Council and the Finance Committee (copy attached as Exhibit 1).

13. I have never received from the Church any of the records requested in the letter from my attorney to the Church dated August 22, 2002 (attached to the Complaint herein as Exhibit B).

14. I have never received from the Church any of the records listed in paragraph 15 of the Complaint.

15. I have never received from the Church any of the records requested in paragraph 16 of the Complaint. I have never received any of the records listed in paragraph 22 of the Complaint.

16. To my knowledge, there has not been a congregational meeting of the Church since approximately 1997.

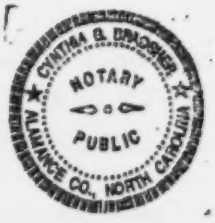
FURTHER, Deponent saith not.

/s/ Vickie Tubiolo
Vickie Tubiolo

Sworn to and subscribed before me this
the 22nd day of January, 2003.

/s/Cynthia G. Bradsher
Notary Public

My Commission Expires: June 5, 2003



IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 02 CVS 1342

STATE OF NORTH CAROLINA

COUNTY OF ORANGE

JOHN TUBIOLO and wife VICKI TUBIOLO, Plaintiffs, -v- ABUNDANT LIFE CHURCH, INC., Defendant.	)	**TRANSCRIPT OF THE HEARING**
	)	**VOLUME 1 OF 1**

The above-captioned case coming on for hearing at the January 21st, 2003 Civil Session of the Superior Court of Orange County, Hillsborough, North Carolina, before the Honorable Kenneth Titus, Judge presiding, the following proceedings were had, to wit:

Monday, 27 January, 2003

Reported by:
Kimmel Grace McDiarmid, RPR

APPEARANCES

For the Plaintiff: Joseph Marion
Harriss and Marrion, PLLC
P.O. Box 51009
Durham, NC 27717-1009

For the Defendant: Paul Klein
Crews and Klein
P.O. Box 221648
Charlotte, NC 28222-1648

MR. KLEIN: Paul Klein from the Mecklenburg County Bar. I'm representing the moving party, the defendant, in this case. I have prepared a memorandum of law which I served on counsel for plaintiff. And I would like to hand it up, with the Court's permission, at this time.

THE COURT: All right.

MR. KLEIN: May I approach?

THE COURT: Yes, sir.

MR. KLEIN: Your Honor, this is a matter that has been pending in this Court for a brief period of time. And we are moving at this time to dismiss it for failure to state a claim. The defendant, whom I represent, the Abundant Life Church, which is a North Carolina nonprofit corporation and operates a church and day school and various other church-related activities in Hillsborough, has been sued by a former member following his dismissal as a member of the church.

There are three claims herein. The relief sought in the first claim is reinstatement. The second claim seeks certain church records. And the third claim asks the Court to order a church annual meeting.

This is the second time we are in court on motion. The first time we were in Court on Mr. Marion's -- for the plaintiff's -- summary motion regarding the second claim. That is the claim for the production of certain records which he sought to have ordered in a summary fashion. At that time we brought to the Court's attention the fact that the plaintiffs had been dismissed as members of the congregation, that they had been dismissed as members on grounds allowed in their bylaws; to whit, spiritual discipline; and that because they were no longer members

they did not have the rights of members under the North Carolina Nonprofit Corporation Law. And that was dispositive of their claim. And that application on the part of the plaintiffs was denied.

Whether that means that the second claim for relief in this case still exists or not is not necessarily a turning point for today's motion. Today's motion is based upon the fact that under a number of Supreme Court of the United States rulings, under the law of the State of North Carolina that has been -- has been very recently repeated -- it is inappropriate for lay courts -- the courts and the judiciary of this state to intervene in matters involving spiritual discipline and other ecclesiastical matters between the church and its congregants, a church and its minister, or a church and its former congregants.

I have cited to the Court in my memorandum of law both the Constitutional provision upon which this is based, the classic 19th Century United States Supreme Court decision dealing with whether the courts can get involved in the issue of who can be members of a particular church and who is not eligible for membership; and the two most recent cases on this subject under North Carolina law, a case of fairly recent vintage from the Supreme Court of North Carolina and the Western District of North Carolina case that is several months old.

In essence, the free exercise clause of the Constitution prohibits, according to the case law that I have cited, the entry into the question of whether scriptural disciplines such as was exercised here in terminating the membership of the Tubiolos is appropriate in one instance or another. That is the motion that I have before the Court.

I believe that if the first claim for relief, which is the claim for reinstatement based on allegedly wrongful

termination, if that falls, the other two, which are dependant upon the Tubiolos being members of the North Carolina nonprofit corporation that is the defendant, will also fall. Simply stated that is our position.

We have received in opposition to this two affidavits essentially saying the same thing by Mr. and Mrs. Tubiolo indicating what good members they were, denying the -- the propriety of the decision to terminate their membership.

I don't believe that this is -- it's appropriate for the Court to consider the decision of the church on the merits. This is matter that -- that the church has sovereignty with respect to is granted by our Constitution. And with respect to that opposition, I do not believe that that opposition is germane to the issue that is before the Court.

What is germane is the issue of law. I have seen no memorandum of law or case law citation to the contrary regarding the position we have taken as to the appropriateness of this case being in court or not being in court. And that's our position, Your Honor.

THE COURT: Mr. Marion?

MR. MARION: Good morning, Your Honor.

THE COURT: Good morning.

MR. MARION: First, just very briefly, I would take issue with -- to some extent with what Judge Rand ruled in the prior hearing. It was our motion for a summary allowance of us to see certain records pursuant to the Nonprofit Corporation Act which allows members to see records of nonprofit corporations.

There was an issue as to -- obviously one of the issues in this case is: Was the purported termination of my clients' membership appropriate? And were they entitled to reinstatement? As such, I would submit his order does not decide that. He -- I think my take on it -- the order itself says that we do not get the records at that time. But it further says that nothing contained herein shall be deemed to affect the rights if any of any party to discovery. The issue of their membership was not decided in that hearing, I would submit.

The -- first I would like to focus, Your Honor, on four phrases in defendant's brief which we submit is the basis on which there is a genuine issue of material fact. The first is the statement on page 2 above the argument that says the grounds for termination were scriptural discipline as allowed by the bylaws. He makes the statement that they were as allowed by the bylaws. As you will see from the argument and the affidavits that we have submitted, we take issue with that statement.

Secondly, he cites in his brief -- Mr. Klein cites three cases. The first is Watson v. Jones, a U.S. Supreme Court case. On page 3 there is a long quote from Watson v. Jones. I focus on the last two lines of that quote: Civil courts have no power to examine or question what has been so settled -- here is the key phrase -- by the supreme tribunal of the church. We take issue with that phrase in this -- in this case.

The third phrase is on the next page, a quote from the North Carolina case, Western Conference v. Miles where the court again talks about that an ecclesiastical matter is one which concerns doctrine, creed, and regulations for government of membership and the power of excluding from association those deemed unworthy of membership by the legally constituted authorities of the church. That's the qualifier on that, as all of these have that qualifier.

The fourth is in the federal district court case. Whenever questions of discipline or of faith have been decided by the highest of the church adjudicatories to which the matter has been carried -- now this, of course, is a motion for the -- the defendants' motion for summary judgment. All of the evidence presented before you should be viewed, of course, in the light motion favorable to the plaintiffs, Mr. and Mrs. Tubiolo.

They have filed two affidavits, one from each of them, in this case. They also have in the record a verified complaint. So that is the -- the basis. I would submit this is an action for summary judgment in that the plaintiffs -- the defendant's motion says motion to dismiss and or summary judgment and makes reference to two affidavits previously filed by the defendant. So when we look at matters outside the pleadings, I think it is viewed as a motion for summary judgment.

But all of the evidence before you needs to be viewed in the light most favorable to the plaintiffs, Mr. and Mrs. Tubiolo. So what is the evidence you would view? And I would submit -- I will not read the entire affidavit and the entire complaint, which is verified. But I will focus on certain paragraphs and give you a brief but necessary overview.

In Mr. Tubiolo's affidavit, starting at paragraph 3, he states that he along with Mr. Kennedy and Mr. Johnson were the founding members of the church. He signed the Articles of Incorporation. This was in 1981 or 1982. The articles are attached to the complaint as Exhibit A or B, I believe. Mr. Tubiolo and these two other gentlemen were appointed as the initial and continuing Board of Directors of Abundant Life Church, Inc. notwithstanding that in the early years of the church he states in his affidavit that all decisions regarding the church were made by

congregational meeting with all members voting on such decisions.

The original Board of Directors, as identified in the Articles, never appointed any successor directors; nor did we ever adopt any bylaws of the corporation. Further, as an active participant in numerous capacities with the church since its inception, there has never been any legal action taken by the church to adopt any bylaws as such. Those are facts, I would submit Your Honor takes for the purpose of ruling on this motion.

Paragraph 7 of his affidavit: Following the purported termination of my membership from the church, my attorney received a letter from David Smith, pastor of the church, referring to the -- quote -- bylaws of the church. This letter attached is -- is attached to the complaint as Exhibit D -- enclosed a single page excerpt sheet of paper which Pastor Smith referred to as -- quote -- a section of our Constitution and bylaws.

Paragraph 8 of his affidavit: The reference in Pastor Smith's letter to a church Constitution and bylaws was a surprise to me. I requested my attorney to write Pastor Smith and request copies of signed and dated corporate minutes for any meeting where the Constitution and bylaws mentioned in the letter were approved. We also requested a complete signed and dated copy of the Constitution and bylaws. A copy of that letter is attached to the complaint as Exhibit E. That was back on September 16th or 19th I believe. Mr. Tubiolo goes on to say: We have never received any bylaws or minutes in response to this request.

Now in the compliant itself, the verified compliant, paragraph 12-B, the plaintiffs, both Mr. and Mrs. Tubiolo state: The ten individuals signing this letter of termination, which is the key document that is relied on by the

defendant. The ten individuals signing this letter have no legal authority to terminate plaintiffs' membership or the membership of any other member of the church.

So, what we would submit to Your Honor is every case cited by the -- by the defendant here contains a qualification. It says if a decision has been made pursuant to proper corporate governance and the highest -- highest of the church adjudicatories, the legally constituted authorities of the church. In other words, it has to be an act of the church.

If that in fact were the case here, if we agreed that the bylaws over here clearly recognize clearly adopted, the bylaws clearly designate these individuals as the trustees of the church, in that situation, the issues set forth by the Supreme Court cases whether the Court would go in and say now: Whether you violated certain Christian precepts or not is not for the Court to say. And I accept that.

But each of these cases does have the qualification that the act must be of the church, of the legally constituted authorities of the church. We submit that the evidence as submitted by the plaintiffs is that there were never any bylaws legally approved. In fact, we have requested them and never -- never gotten them. There is this single sheet of paper that's attached to a letter that if you will also see in the file I write immediately back to Pastor Smith, when that sheet of purported bylaws was attached, and request a complete set. And of course, as the affidavit said, we never have been supplied with anything, any minutes, any bylaws, anything else.

So there is a factual issue here. And it cannot be resolved -- I would submit -- by the Court today. Did the individuals signing that letter of termination have the authority under the church's -- this church's -- system of

corporate governance to terminate the membership of the plaintiffs, Mr. and Mrs. Tubiolo? Did they have that authority? The evidence offered by this plaintiffs is they did not. And that is consistent with all of the cases. The motion should be denied on those grounds.

The -- there is a separate and entirely different basis, I would submit, that the Court should deny this motion. As it's been said, the church, Abundant Life Church, Inc, is a North Carolina nonprofit corporation. It's not an -- a religious association, which is what each of the entities involved in all of the cases cited to you involved. In this case, the church went out and specifically filed Articles of Incorporation and asked for the protections allowed by corporations under the State of North Carolina.

There is a Nonprofit Corporation Act which sets forth the rules of governance with respect to nonprofit corporations. Now -- and of course they get certain benefits by filing as a corporation. They get the benefit of limited liability for example. North Carolina Statute 55-(a)630, which I would be happy to hand up to Your Honor, is in the Nonprofit Corporation Act. And it involves termination, expulsion, and suspension of members of nonprofit organizations that have members.

Paragraph A of that statute says: No member of the corporation maybe expelled or suspended. And no membership may be terminated or suspended except in a manner that is fair and reasonable and is carried out in good faith. Now the key word there I submit is manner. In other words, I'm not saying that again that the Court goes into the grounds for the alleged termination. I'm saying that the statute says the manner must be fair and reasonable and carried out in good faith.

Now again I would like to cite to Your Honor certain facts in the affidavits that -- that speak to the issue of the manner that this was taken. In paragraphs 14 of Mr. Tubiolo's affidavit, paragraph G says: Prior to the September 5th, 2002 letter purporting to terminate my membership, I have never been warned, either in writing or otherwise, about the possibility that any of my actions might result in scriptural discipline or termination of membership from the church. Never been warned that he could be terminated.

Mrs. Tubiolo's affidavit says the same thing. Paragraph H there, right below that says: Prior to the letter of termination, I never received any notice, written or otherwise, that a proceeding would be undertaken to consider the termination of my membership. Thus I was never given any opportunity to hear the allegations against me; nor was I ever given an opportunity to present any evidence or witnesses on my behalf regarding the issue of termination.

Then we back up a little and say: Well, what happened in the last five or six months prior to September 5th? Paragraph 15 of the affidavit says -- refers to a meeting with Mr. Tubiolo and Mike Mayor who is -- works with the finances of the church in March 14 of 2002. It says: Between that meeting and September 5th, the only contact I had with any church official regarding finances or other concerns I had was the letter from my attorney attached to the complaint herein as Exhibit B which is dated August 22nd, 2002. And there was a follow-up letter on March 28th, 2002 to the church counsel and the Finance Committee; copy attached to the affidavit. There is a one page, one paragraph letter asking for additional records that's attached to the affidavit.

So Your Honor, I would refer you to my letter of August 22nd which is, other than this one paragraph letter back in March, is the only thing that has happened. My letter attached as Exhibit B to complaint states that I represent Mr. and Mrs. Tubiolo; that, pursuant to the North Carolina statute, which allows members to get certain corporate records, we were requesting certain corporate records. We also on page 2 requested a copy of any bylaws if you have any. Comes up again.

In the letter I state: Well, if we don't get the records, we will propose to show up and inspect and copy the records as allowed by the statute on September 6th. Now, of course, what happened was on September 5th a letter, which is attached to the complaint as Exhibit C, went out purporting to terminate Mr. and Mrs. Tubiolo's membership.

Now what I see happening, Your Honor, is since a March letter requesting records nothing happened, no warnings no -- no written notice of anything. The only thing that happened was I sent a letter on behalf of these two individuals requesting, under the Nonprofit Corporation Act, certain records. Requested to -- requested that we show up and inspect and copy them on September 6th. On September 5th, the membership is purportedly terminated.

Thus, when we then move forward and seek -- seek some form of redress, the defense is, "No. You are terminated. You are not members. You don't have a right to records," when we were simply asking for certain documents as allowed under other portions of the North Carolina Nonprofit Corporation Act.

So if -- and this is again -- I would submit -- entirely consistent with the Supreme Court issues. We are not talking about examining what they did or didn't do as

Christians, as following the precepts of this church, as being subject to scriptural discipline. We are talking about a manner in which the actions were taken.

If -- I mean, to me beyond the statutes and beyond everything we have talked about, it just makes sense that there has to be some oversight as to whether an action purported to be taken by a church or any nonprofit is the act of the church. And especially in this case where the very first letter requested bylaws. The second letter requested bylaws. The complaint makes the statement: There have never been any bylaws. And consistently, since the very first piece of correspondence, we have asked for this and for verification of what authority the church has. And consistently -- and we sit here today -- without any -- any evidence whatsoever that there are any bylaws other than that one letter that attaches a single sheet of paper.

So I would submit to Your Honor that at this point, it would be error to grant the motion for summary judgment to end this case when the issue of whether or not the individuals that took the action they did by this purported termination of membership had the authority in this corporation to act as they did. Thank you.

MR. KLEIN: Let me point out to the Court that we are moving primarily to dismiss on 12(b)6 grounds. And I'd like to, for the purposes of organization, be heard only on that motion. I believe the motion is meritorious and that Your Honor should be granting that motion. However, if the Court decides for some reason that that motion is in appropriate, I would like to then be heard on the summary judgment -- on the summary judgment portion of the relief sought.

I think the motion for -- motion to dismiss is -- can be simply decided based upon a reading of the facts that are

contained within the four corners of the complaint and its exhibits. The complaint alleges that the Tubiolos were members of the church and that their membership was terminated and it attaches to the complaint the letter citing scripture, a dozen or more scriptural references to the reasons for their termination, is attached to the complaint and has become a part of the complaint.

The only reason one would have to go beyond the four corners of the complaint and the exhibits in order to determine the grounds for the dismissal would be if one did not recognize that this -- that the citations were scriptural. And that's the only reason that I cited an affidavit that I had previously submitted to the Court from the senior pastor saying: Scriptural discipline is the basis for the discharge, if it's not evident from that particular letter.

With regard to whether the letter represents the actions of the church, Your Honor, the church is in Court. The church is speaking through its attorney. And the church is party to this action. And the church is taking the position that the Tubiolos membership was terminated on the basis of scriptural discipline. That being the -- that being the -- the matter that is before the Court, for the Tubiolos to say that this is not a proper tribunal -- that is, the church board which terminated their membership is not a proper tribunal -- is, if Your Honor will forgive me, a cheap argument.

We as the church are governed by a body that the Tubiolos have chosen over the years not to recognize as legitimate. However when their attorney wrote to the church and asked for church records and asked for bylaws, who did they write to? They wrote to the ten individuals who signed the letter saying that you are -- that your membership has been terminated. Now they wrote to 14 individuals altogether. But all ten individuals who wrote

the -- who happened to be present to sign the letter terminating the membership, all ten of those -- and one other, Dr. David Smith, the senior pastor who was -- who has signed the affidavit indicating that scriptural discipline has been utilized. Those are the people who were recognized, at least in terms of when the Tubiolos wanted something, who they looked to.

The -- the reference in the Supreme Court case to the highest -- I believe it's called adjudicatory -- the church body that has the judicial function, is only because the decision that was under review was the decision of something called the general assembly at that time. It did not have to do with either the pastor or the church counsel of a local church.

But the fact of the matter is that each and every one of the three cases that I have cited, the Supreme Court of the United States case, the federal court of North Carolina case, and the Supreme Court of North Carolina case, all said that matters dealing with internal governance of the church are in the hands-off-to-the-courts category. We are not going to get involved as to what is the legally constituted body that is able to make these decisions regarding membership. And we are not going to look at the decisions regarding membership either.

So this question has been answered. And by the way, it has been answered in 2002 in a case involving a corporate church, Mallard Creek Presbyterian Church, Inc. Was the defendant in the western district of North Carolina case. So all of the alleged legal issues that divide us, whether the board was appropriately constituted, whether the bylaws were ever appropriately adopted, or whether the church is a corporation versus being a religious association, all of these things have been decided on the basis of the cases that I have brought before the Court and to which no

countervailing argument has been furnished by plaintiff's counsel.

Now if there is a question as to whether there are bylaws or there is a question of what the bylaws say or whether the bylaws' page that governs termination by -- by means of scriptural discipline has been sort of negated by another page that is somewhere in the bylaws, if those were legitimate questions to bring before the Court, there should have been some discovery done in this case to get the bylaws. This case has been pending for four months. I have yet to receive the first formal discovery request in this case if that were an issue.

The point is the complaint attaches to it the bylaws. Those bylaws utilized to terminate the membership. Whether it was a wise decision, whether it was a surprise decision, whether it was a decision that should have been made only after evidentiary hearings and testimony and court records and transcripts and things of that nature, that is something that it is up to the church to decide. And I submit that under our -- under our basic rights under the Bill of Rights under the First Amendment, that is not something that this Court should be interfering with.

This church, which I represent, whose governing body has -- has brought before this Court a motion asking that the Court -- the Court not exercise jurisdiction in this case over this -- over this claim, based upon Constitutional principles. That church body is entitled to a certain amount of sovereignty and self-governance. And that is not changed by the fact that it is a corporation.

To the extent that the North Carolina Nonprofit Corporation Laws seem to suggest another conclusion, they do not apply. They do not overrule the Constitution of the United States or the Bill of Rights. So that -- so that the fair

hearing that's being contemplated by them or the suspension of membership without having an opportunity to know in advance that -- that you -- not having the opportunity to agree in advance that this is a properly constituted board, whether these rights exist in the Chamber of Commerce or in any other voluntary organization, that's a subject that we might discuss at another time.

The question here, Your Honor, is whether the court system of this state is allowed to look behind the decision making of the church body that made these -- made this decision and terminated the membership of the Tubiolos. And I believe that the cases which I have cited -- and no cases to the contrary have been cited by their counsel. I believe the cases are very clear on this. They are to the point on this. They are up to date on this. And they govern the motion to dismiss.

So I respectfully submit that we have a perfectly valid motion to dismiss. And I respectfully request that the Court exercise its decision to abstain on behalf of the court from hearing this controversy.

THE COURT: Who gets the last word? This Court is loathe to intervene in any matters respecting the church because this Court is also very cognizant of the founding fathers' insistence that there be separation of church and state, which is a very valid concern.

In this case however, I do not feel that a 12(b)6 motion is appropriate at this point because of the reliance on the church and the use of the North Carolina laws for the nonprofit corporation and the -- all of the case law which indicates provisos. And prior to the -- any discovery as to whether there is a question of fact in this case or not, those provisos are applicable.

And so for that reason, I believe the 12(b)6 motion is inappropriate at this time because there is a question -- there is a claim which may have merit at some point -- may have merit. And hearing a motion for summary judgment at this time, when I'm looking at the case management schedule which requires that discovery be completed by June 1st would be inappropriate for me to hear a summary judgment motion at this time. And this matter should be dealt with at the summary judgment motion. And so the motion for dismissal under 12(b)6 is denied.

MR. KLEIN: Your Honor, may I make one further request?

THE COURT: Yes, sir.

MR. KLEIN: Okay. Actually maybe -- there may be a second request, depending on your ruling on this.

Your Honor, this is a fairly dispositive issue in this case. The motion is made in good faith. And I ask Your Honor to certify this question --

THE COURT: Which I will do.

MR. KLEIN: -- to the Court of Appeals.

THE COURT: Which I will do.

MR. KLEIN: Okay. Thank you.

THE COURT: Mr. Marion, if you would draw the order denying the 12(b)6 motion.

MR. MARION: Your Honor -- okay. And I want to just be clear on the status of the summary judgment because the -- the -- the motion --

THE COURT: -- was pled in the alternative.

MR. MARION: -- says motion to dismiss and/or summary judgment. And you are saying --

THE COURT: The Court -- I am making no ruling on summary judgment at all because there has been placed before me no evidence of any discovery which has taken place which would flesh out whether there is a question of fact because the question of fact appears in the complaint and answer. And so there may not be a question of fact once discovery takes place. I don't know. So I'm not ruling on the summary judgment motion. But I am, because of the provisos within the case law and the allegations contained in the complaint --

MR. MARION: Yes, sir.

THE COURT: -- denying the 12(b)6 motion at this time.

And I will certify it for immediate appeal since it is a dispositive motion.

MR. MARION: Thank you, Your Honor.

MR. KLEIN: Thank you, Your Honor.

(Court recessed for the purposes of this hearing.)

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 02 CVS 1342

STATE OF NORTH CAROLINA

COUNTY OF ORANGE

JOHN TUBIOLO and wife VICKI TUBIOLO, Plaintiffs, -v- ABUNDANT LIFE CHURCH, INC., Defendant.	)	**CERTIFICATE OF THE COURT REPORTER**

I, Kimmel G. McDiarmid, the officer before whom the foregoing proceeding was taken, do hereby certify that said hearing, pages 1 through 25 inclusive, is a true, correct, and verbatim transcript of said proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was heard; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, and am not financially or otherwise interested in the outcome of the action.

/s/Kimmel G. McDiarmid
Kimmel F. McDiarmid, RPR
Official Court Reporter
Notary Public

My commission expires 15 December, 2003

N.C.G.S. § 7A-27

§ 7A-27. Appeals of right from the courts of the trial divisions.

(a) Appeal lies of right directly to the Supreme Court in all cases in which the defendant is convicted of murder in the first degree and the judgment of the superior court includes a sentence of death.

(b) From any final judgment of a superior court, other than the one described in subsection (a) of this section, or one based on a plea of guilty or nolo contendere, including any final judgment entered upon review of a decision of an administrative agency, appeal lies of right to the Court of Appeals.

(c) From any final judgment of a district court in a civil action appeal lies of right directly to the Court of Appeals.

(d) From any interlocutory order or judgment of a superior court or district court in a civil action or proceeding which

(1) Affects a substantial right, or

(2) In effect determines the action and prevents a judgment from which appeal might be taken, or

(3) Discontinues the action, or

(4) Grants or refuses a new trial, appeal lies of right directly to the Court of Appeals.

(e) From any other order or judgment of the superior court from which an appeal is authorized by statute, appeal lies of right directly to the Court of Appeals. (1967, c. 108, s. 1; 1971, c. 377, s. 3; 1973, c. 704; 1977, c. 711, s. 4; 1987, c. 679; 1995, c. 204, s. 1.)